

**American Postal Workers Union
AFL-CIO**

MOE BILLER, PRESIDENT

WORKSHOP #2

BASIC SHOP STEWARD TRAINING

INSTRUCTORS:

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TOOLS OF THE SHOP STEWARD

- ◆ The Contract
- ◆ The Local Memorandum of Understanding
- ◆ The Seniority List
- ◆ 1187s - Authorization for Dues Deduction to join the union
- ◆ Step One, Two and Three Grievance Appeal Forms
- ◆ Tablets and writing pads for statements and notes

Shop Stewards should have copies of or access to the following handbooks and manuals:

ELM	-	Employee and Labor Relations Manual
CBR	-	APWU Collective Bargaining Reports
E-31	-	Registry Operations Systems Guidelines
E-301	-	Guide for Processing Personnel Actions
E-303	-	Qualifications Standards Bargaining Unit Positions
EL-201	-	Position Description
EL-307	-	Guidelines on Reasonable Accommodation
EL-311	-	Personnel Operations
EL-401	-	Supervisor's Guide to Scheduling and Premium Pay
EL-501	-	Supervisor's Guide to Attendance Improvement
EL-502	-	Retirement Guide
EL-506	-	Civil Service Disability Retirement
EL-812	-	Hazard Safety
EL-827	-	Driver Selection, Training & Licensing
EL-921	-	Supervisor Guide to Handling Grievances Handbook
F-1	-	Financial Handbook for Post Offices
F-2	-	Functional Management
F-10	-	Travel
F-21	-	Time and Attendance

F-22	-	Postal Source Data System Time and Attendance
M-4	-	Vehicle Maintenance Program Guidelines
M-5	-	Schemes: Construction, Assignment, Training & Proficiency
M-15	-	MPLSM Operating Guidelines
MS-47	-	Housekeeping Postal Facilities
MS-63	-	Maintenance Operations Support
PO-201	-	Philatelic Center Operations Guide
PO-401	-	Manual Distribution Operating Guidelines
PO-402T	-	Scheme Training Instructor's Guide
PO-405	-	Letter Sorting Machine
PO-405T	-	Operator Training for Sorting Machines
PO-406A	-	Flat Sorting Machine Guidelines
PO-409	-	Pitney Bowes OCR/CS Operating Guidelines
PO-411	-	Burroughs OCR/CS Operating Guidelines
PO-602	-	CFS Management Guidelines
PO-701	-	Fleet Management

The handbooks and manuals listed above are available from the APWU Order Department.

Rights Of The Shop Steward

ARTICLE 17, SECTION 3: When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not unreasonably be denied.

In the event the duties require the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the other area he/she wishes to enter and such request shall not be unreasonably denied.

The steward, chief steward or other Union representative properly certified may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office.

If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

Notes:

GUIDELINES FOR SHOP STEWARDS

Know your rights under Article 17

- Right to leave your work area with approval of the Supervisor
- Right to receive any information in relations to grievance
- Right to interview witnesses, grievant, other workers and supervisors during work hours
- Right to determine whether or not a grievance exists
- Right to go into different sections work/locations

Have a working knowledge of the agreement, also local memo, handbooks, and manuals

- Use labor management meeting notes
- Use Safety Meeting notes
- Use precedents or Past Practices
- Use previous arbitration awards

Steward should be an organizer

- Know enough about the Union to Organize new members
- Let the members know their rights
- Develop credibility and respect

Things a Shop Steward should do

- Make sure you are on a 70/20
- Steward should be the established leader of his/her section or tour
- Steward should provide a steady flow of information to the membership
- Steward should police the contract
- Steward should uphold Local Union Policies
- Steward should always follow up questions or inquiries
- Steward should make every effort to resolve a grievance at the first step
- Steward should keep grievant informed of grievance progress
- Steward should be totally prepared prior to presenting the case to Step 1
- Steward must challenge a supervisor who attempts to undermine his/her authority
- Steward should tell the member if he or she feels that a grievance exists

What a Shop Steward should not do

Never allow management to set time limits

Ex. Time to investigate

Interview

Write a grievance

Never speak against the union in front of management

Never take management's side in a dispute between worker and supervisor

Do not attempt to be a mediator you are a union advocate.

Never make decisions which can be construed as union policy

Never hold back information relative to your case

Using the Correct Approach

A. Hat in Hand Approach

This is when a steward does not utilize all the investigative tools available

Steward is timid and does not have the confidence to deal with management on equal terms

Steward looks for the easy way instead of presenting a strong case

Steward is lazy and disinterested

B. Hard Guy Approach

Steward is stubborn and abusive

Steward is unprepared and attempts to intimidate management by putting on a show

Steward gives the impression of being tough but rarely wins grievance

C. The Business Like Approach

The business like steward utilizes all the tools available

In addition he/she is:

Knowledgeable

In control

Courteous

Well prepared

Relentless

Firm

Business like

***The Business Like Approach is the best approach**

Steward's "Special Immunity"

The Situation

Dottie Doe, APWU steward, informs Supervisor Load that she wishes to discuss grievances concerning two employees, Sam Smith and Betty Brown. Load is curious. He thinks to himself - "why on earth does Doe want to talk with these two, especially with Betty Brown." Load wonders if Doe is trying to cause "trouble". Recognizing that "look" of concern on Load's face, Doe, the experienced shop steward, speaks-up and mentions that she wishes to see Ms. Brown about a pay claim which had been denied. She then reiterates her request to speak with the two employees. Load looks away from Doe and says "okay, go ahead. But I hope your not going to encourage them to file grievances." As Doe leaves the area, she hears him say under his breath "I'm going to talk to Betty Brown."

In the meantime, Doe has gone to talk with one of the employees, Sam Smith in the steward's room. On his way to that meeting, Doe sees Supervisor Load talking to Brown and asking "why she has filed a grievance". Hearing this, Doe tells Supervisor Load "to get out of room's face. You are harassing her for filing a grievance." Load tells Doe, "You go to my office". Doe replies "I damned well will not. I am released on Union business with Mr. Smith". Again Load says "you go to my office". Doe replies that she would go to Load's office after she had finished her union business. She then leaves the area.

Later, after Doe had finished talking with Mr. Smith, she goes to Load's Office. She asks Load if he wants to see her. Load says "Get out of my office!" Doe explains to Load that she was handling a grievance for Ms. Brown pertaining to four days under which she was denied workman's compensation. Doe had prepared the CA-1 Form to file for Workman's Compensation on behalf of Brown. She gave the form to Load. Load had apparently not delivered the form to OWCP. OWCP had not received the CA-1 and Ms. Brown was not paid for the four days she lost from work. Doe states that she felt that this was Load's fault and that she had been upset because she felt Load was harassing Ms. Brown about the grievance pertaining to the loss of pay.

Doe was charged with a failure to follow instructions and improper conduct based on her refusal to go to Load's office when ordered and for telling Load to "buzz off, I'm on union time" when he ordered her to curtail grievance time and report to his office. Doe received a notice of removal.

Was this fair? Was it proper for management to discipline Dottie Doe for her conduct as a steward. If you were the arbitrator, how would you rule?

In facts identical to the above situation, Arbitrator John Caraway noted that stewards are normally protected by immunity from discipline based on his or her conduct while acting as a steward [AIRS No. 400,004 (1988)]. However, in this particular case, Caraway held that the steward's conduct had exceeded the scope of this protection. In front of other employees the steward had directed profanity at a supervisor and said that "I'm a union steward and I can talk to you anyway that I wish". In his award, Caraway reasoned:

There is no question but that (grievant) is an experienced and well intentioned union steward. But on this occasion he erred in his judgement as to the limits and rights which the union steward has. In a closed meeting with (supervisor) there could be no objection to the conduct of (grievant). But when this conduct is before the employees and would have the effect of embarrassing the supervisor, challenging his authority, and belittling the supervisor, such conduct cannot be tolerated. For that reason discipline was properly imposed.

The importance of this award is to illustrate that there are boundaries to acceptable conduct when acting as a steward. Of course, a steward is not outside the scope of immunity merely because of raising his or her voice to a supervisor in front of other employees. There are other factors, such as:

- what was said and how loud it was said;
- whether it was actually heard in front of bargaining unit members;
- whether the steward persisted in unacceptable conduct in front of bargaining unit members after being cautioned by the supervisor;
- whether there was disruption caused by the alleged unacceptable conduct.

For decades, the principle of "steward's immunity", cited by Arbitrator Caraway, has been recognized by labor arbitrators and the National Labor Relations Board. However, the scope of this immunity from discipline is by no means unlimited or well-defined.

Sections 7 and 8 (a) (1) of the National Labor Relations Act provide an important safeguard against employer retaliation for statements made during the course of grievance meetings. There is a general right under these sections for employees "...to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection ...". The Board has interpreted these provisions as prohibiting the discipline of stewards for abusive remarks made to a supervisor or management officials during a

grievance meeting or in a bargaining session. This special application of Sections 7 and 8 to the role of the shop steward is distinguished from the situation where an employee ordinarily can be disciplined for disrespect to a supervisor.

The Board applies the special immunity rule so that stewards are not prevented from carrying out their own duty to represent the bargaining unit. Without the rule, stewards would be hesitant to speak freely. They would have to carefully choose every word they said to management or hold back from zealously presenting a grievance for fear of overstepping the line that is toed by ordinary employees.

Arbitrators have so unanimously adopted the general theme of the NLRB special immunity rule that rarely is the source of this rule cited in arbitration opinions. "Stewards immunity" has become somewhat of a common law or unwritten rule of labor arbitration.

What is not quite so unanimous is agreement on the precise parameters of the "immunity" rule. In grievances involving similar facts, arbitrators have handed down varying opinions as to whether a steward's immunity has shielded him or her from discipline. Consequently, one arbitrator might view your conduct as being proper while another reaches the opposite conclusion. Exercise caution in applying arbitration-made rules to your personal situation. However, some generalizations can be made from a study of arbitration awards and NLRB decisions on this issue.

When Does Immunity Take Effect?

As a rule of thumb, immunity takes effect when it is necessary for a steward to investigate or adjust a grievance or to investigate a specific problem to determine whether to file a grievance. This does not mean that you will be protected merely because you are venting a personal frustration. Indeed, some arbitrators have cautioned that a steward should hesitate to represent himself as to his or her own grievance [Reynolds Metals Co., 39 LA 584, 587 (1962) (non-USPS)].

As a guideline, arbitrators examine whether the proper contractual rules have been followed for securing steward's release time. For this reason the provisions of Article 17, Section 3 that relate to securing the permission of a supervisor to investigate or adjust grievances should be followed as closely as possible. Of course, immunity may still attach itself to a steward's conduct depending on a given situation and the reasons given for not first following the provisions of Article 17.

Specific Situations

Tone Of Voice Or Abusive Language

Probably, the most frequent sort of conduct by a steward that attracts the wrath of management is what might be perceived as the steward's use of abusive language during a discussion with management pertaining to a grievance. Short of violence and physical or verbal threats against a supervisor, a steward is generally protected against discipline when they raise their voice, use profanity, or other berating language when in the status of a steward.

Two caveats should be noted:

1. Abusive language may not be protected where it does not relate to the grievance which is the subject of the discussion.

For example, if you were in a heated argument with a supervisor over an issue of whether an employee should be disciplined for using sick leave, raising your voice or even using profanity to make a point, then you would be protected. In the same discussion, if you suddenly started arguing about a matter unrelated to a grievance, you probably would not be protected against discipline.

Remember, you wear two hats; the hat of the obedient employee and the hat of the zealous steward. Keep in mind which hat you are wearing at all times.

2. The time and place of your contacts with a supervisor as a steward may lessen the protection given to conduct that would otherwise be shielded by immunity.

Arbitrators note the distinction between the speech and/or conduct of a steward in private versus work room floor settings, i.e. in front of employees. As noted by Arbitrator Caraway, if a steward is on the workroom floor and verbally abuses a supervisor over a grievance or potential grievance, the steward may have exceeded his or her special immunity. In such a situation, arbitrators may sometimes weigh the authority of the supervisor to maintain the control and direction of the employees heavier than the steward's special immunity. When confronting a supervisor on the workroom floor it is wise for the steward to be courteous, restrained and resist any effort to embarrass or humiliate the supervisor.

Insubordination

In a non-APWU arbitration hearing, Arbitrator Turku upheld the discharge of a union steward for a series of

insubordinate acts designed to embarrass and humiliate management in front of other employees. Turkus stated:

In return for assuming a steward's responsibilities an employee does not receive the right to be high-handedly insubordinate or to urge others not to work as directed by their supervisors.

On the other hand, it is not the supervisor's prerogative to decide what is or is not a grievable matter. Consequently, a charge of insubordination would have doubtful validity where a steward disregarded a supervisor's refusal of a request to investigate a grievance. For example, in *International Harvester*, 16 LA 307 (non-USPS arbitration) a union steward requested permission to investigate a grievance. The foreman refused this permission on the grounds that the matter did not involve a contractual violation and ordered the steward back to his job. The steward proceeded with his investigation despite the foreman's refusal.



The arbitrator overruled the subsequent removal of the steward based on the rationale that there is a clear distinction "between the case of a supervisor telling an employee to go back to his job, and a supervisor telling the union to stop investigating a grievance."

In a situation where a supervisor tells you that you should leave before finishing a discussion concerning a possible violation of the contract or related matter, some arbitrators have held that it is permissible for a steward to refuse an order to return to work as long as they have not been belligerent or insolent. However, other arbitrators, and perhaps a majority, have not adopted this rule or refer to a modified version of the rule.

The safest course of action to follow in such a situation is to leave or return to work as ordered but only after objecting to the supervisor's order to leave as contrary to your right to process a grievance in good faith. [See, *AIRS No. 1687 (Levak)*] Management's refusal to provide an opportunity for a steward to fully inves-

tigate matters relating to a potential grievance opens the door for an unfair labor practice charge.

Counselling Employees To Refuse To Answer Questions

In addressing this issue, the National Labor Relations Board ruled that an employer may lawfully discipline a shop steward for advising employees who witness an event which could give rise to disciplinary action against other employees not to answer the employers's questions about what happened [In *Manville Forest Products Corp*, 2679 NLRB No. 72, 115 LRRM 1266 (1984)]. Likewise it is advisable to refrain from conduct which could be perceived as suggesting that employees refuse the orders of a supervisor concerning work related duties.

Disruption Of Workplace

A charge by management that a steward is disrupting the workplace may be sustained as the basis for discipline. The outcome of such a charge depends on the circumstance, eg. who instigated the situation - supervisor or steward. However, the consensus appears to be that a steward's limited immunity does not protect him or her where such actual disruption is shown to have been caused by the steward's conduct and other mitigating factors are not present [In *the Matter of USPS and Vega*, 282 NLRB No. 102 (1986)].

In *Vega*, a shop steward was discharged for conduct which according to Postal Service resulted in the disruption of mail handler operations. In this case, *Vega*, the steward, was working on the belt but suddenly broke away from his work and approached the supervisor while shouting that the supervisor should stop "harassing" the mail handlers and that he should stop telling them to speed-up their work. The supervisor explained that he did not consider it harassment to ask employees to perform the duties that they were as-

signed to do. Vega continued to shout until after the discussion had moved to the supervisor's desk area.

The NLRB found that the work of the mail handlers had been negatively affected by Vega's protestations to "stop harassing" the workers on the belt and his urging the workers that "we don't have to take this." The disruption of the workplace by the steward, i.e. decreased production, caused by his conduct was outside the scope of steward's immunity.

Orders To Cease Grievance Investigations

Arbitrators have held that a supervisor does possess the authority to terminate a conversation or interview through a direct order to a steward so long as the order is conveyed in a clear and responsible manner and does not constitute a mere emotional outburst in anger. However, even when the order is given in the correct form, a shop steward clearly has the right to question the order and argue its propriety, so long as the argument is not carried on to the extreme. A steward has the right to aggressively process a grievance in good faith, and does not have to back down and show subservience at the whim of a supervisor.

For example, an employee on union business as a steward went to discuss a grievance with a supervisor. The discussion soon heated up over the issue of whether the supervisor should accept a grievance. Soon the supervisor became extremely angry and shouted at the steward to "get out" and finally ended up pushing the steward out of the office. The arbitrator ruled that it was improper to discipline the steward. Arbitrator Levak reasoned:

The (Supervisor) did not take action to terminate a confrontation between equals through a direct order. Rather, he angrily blew up in the middle of a conversation between what he perceived to be a superior and a subordinate at the moment he perceived that the subordinate was failing to accord him the proper respect as a supervisor. To categorize (supervisor's) angry and virulent outburst as an overreaction would be understating the situation. It is apparent to the Arbitrator that he became totally enraged and used his physical presence, raised voice, angry gesture and physical contact in an attempt to immediately dominate and subjugate the grievant. The Arbitrator is not surprised that the grievant was shocked and stunned and that she reacted as she did. An angry and abrupt "get out" to an equal can hardly be categorized as a proper and lawful order. (AIRS No. 1687 (Levak, T., (1983))

Keep in mind that the facts in the Levak decision can be distinguished from the cases involving the general rule that a supervisor can terminate a discussion. In Levak, the steward was discussing a grievance in good faith, as was the union's right under the National Agreement and the National Labor Relations Act; from the

start the supervisor had refused to treat the steward as an equal; and the supervisor was the one who irrationally instigated the steward's refusal to leave the building.

Again, the safest course of action is to state your objection to such orders, then leave as requested. Following the orders of the supervisor, but under protest, is a more practical alternative than remaining there to argue over whether such orders are within the authority of a supervisor when dealing with a steward. Your objection to such actions can be followed up through the filing of a grievance or an unfair labor practice charge.

Safeguarding Immunity

There are several ways in which you can insure that your conduct or speech is protected when acting as a steward.

whenever possible, ring the clock for union business when discussing or investigating a grievance or possible grievance;

request permission from your immediate supervisor when it is necessary to leave your work area to investigate grievances or a specific problem;

when necessary to enter another area within the installation, also request permission from supervisor in that area;

keep a cool head, when necessary to make a point control your outrage or indignation so that it is not carried to the extreme;

don't represent yourself in grievances;

try to avoid confrontations on the workroom floor, request private meetings and save verbal aggression for private meetings.

This checklist should not be interpreted as meaning that you must "tiptoe" around a supervisor when investigating or discussing a matter.

Your overriding responsibility as a steward is to uphold the rights of bargaining unit members under the National Agreement. To accomplish this goal, the law allows you to assume the status of an equal when dealing with management as a steward. Likewise the law protects you against transgressions by a supervisor who refuses to recognize you as his or her equal. Nevertheless, your dual status as an employee and steward requires a common sense approach to balancing the duties of an ordinary employee and the responsibilities of an effective advocate for the workers. Recognizing the distinctions between these two roles and an awareness of how far you can carry your enthusiasm and zealotry are crucial to maintaining your immunity as a steward.

Grievance Procedure Definition

DEFINITION

The grievance procedure is covered by Article 15 of the National Agreement.

A grievance is defined as a ~~dispute, difference, disagreement or complaint~~ between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of the Agreement.

Be aware that there is a difference between a valid grievance and a mere gripe or complaint. Shop stewards should never enter complaints or gripes into the grievance procedure simply to appease a dissatisfied worker. To do so wastes valuable time and resources that could be used for processing more-serious cases.

The decision on whether or not a grievance is valid (worth processing) must be made by the shop steward or other union representative, not by the grievant. This decision is based on what is best for the entire bargaining unit, not necessarily what is best for the individual grievant.

Notes:

Time Limits—Article 15

Time limits are important to every case. The APWU's responsibility and management's responsibility are defined below. Read carefully and understand your obligations.

1. If the union fails to maintain time limits, it is considered a waiver of the grievance.
2. If the employer doesn't raise the issue of time limits at Step 2 or at the Step where the employee/union failed to meet time limits, which ever is later, the employer waives any objection to processing the grievance.
3. Failure by the employer to schedule a meeting or render a decision within the time limits, including extension periods, shall be deemed to move the grievance to the next step of the grievance procedure.
4. The parties are contractually obligated to good faith observance of the procedure.
5. The procedure is designed to resolve grievances at the lowest possible level.

Time is of the essence in discipline cases. Irreparable harm can be done to the employee's career if he or she loses a discipline case due to the shop steward's or other union representative's failure to adhere to the prescribed time limits. Moreover, the longer it takes for a discipline case to work its way through the grievance procedure, the longer the grievant may remain in a non-pay status—which could have tragic consequences for the grievant and his or her family.

Notes:

Test For Just Cause

There are seven (7) specific questions that must be answered in an arbitrator's mind to establish that a suspension or discharge was for "just cause." A positive "no" answer to one or more of the questions would indicate that "just cause" did not exist.

1. Did the USPS give to the employee forewarning or knowledge of the possible or probable disciplinary consequences of the employee's conduct? In other words, were there some kind of written (or oral) instructions governing the situation the employee is being disciplined for. This could be a notice posted on a bulletin board or found in an order book. The important thing is that it must be proven that there was actual written or oral communication of these rules before the incident occurred.
2. Was the rule or managerial order reasonably related to the orderly, efficient and safe operation of the USPS's business? Even if he/she believes it's unreasonable, the employee must obey the order. The employee can later file a grievance.
3. Did the USPS, before administering discipline to an employee, make an effort to discover whether the employee did, in fact, violate or disobey a rule or order? The employee has a right to know what he/she is being disciplined for. The investigation should be made before disciplinary action is taken. In too many cases, the action is taken without proper investigation.
4. Did the USPS conduct the investigation fairly and objectively? (No comment needed.)
5. At the investigation, was there substantial evidence that the employee was guilty as charged?
6. Has the USPS applied its rules, orders, and penalties evenhandedly and without discrimination to all employees? Have other employees been guilty of the same infraction of rules and not received a disciplinary action?
7. Was the degree of discipline administered by the Postal Service in a particular case reasonably related to (a) the seriousness of the employee's proven offense, and (b) the record of the employee in his/her service with the USPS? It would not be just to fire an employee for being tardy twice over a six month period if he/she had an unblemished record for 15 years prior to that. On the other hand, if the employee has a record of previous offenses, that record should not be used to judge whether he/she is guilty of the latest offense.

Following the above will not guarantee a winner in all grievances, but it should enhance their chances of being settled successfully.

Standards Determining Past Practices

It is difficult to identify any standards by which arbitrators determine if a practice exists and how much weight it should be given insofar as their decision and award is concerned. However, there are some very definite ingredients when the question of past practice is taken under consideration by the arbitrator.

1. **Consistent**—That is to say that the practice has been granted or applied consistently, uniformly, regularly and without break.
2. **Clearly stated**—This means that the practice has been observed by the parties and is followed without protest or objection from one party or the other.
3. **Duration**—That is to say that it has existed and been followed over a reasonably long period of time. In this regard a “bridge effect” may be of significance to some arbitrators. The bridge effect results from a practice commencing under one agreement and continuing unchanged and unprotested into a renewed agreement. As a result it bridges one collective bargaining agreement with another between the parties without having been changed or discontinued.
4. **Jointly accepted and acted upon**—This means that both parties, through their line representatives, have operated as though the practice, in fact, existed and was a guiding rule. This should indicate to the arbitrators that a practice exists that is agreeable to and accepted by both parties.

One important factor that should be noted is that the frequency of the practice may not be as important as the mutual observance. In other words, a practice which occurs only three times a year and which, on each occasion, is consistently executed may have more weight on an arbitrator's decision than another practice which occurs 15 times a year but is not consistently administered from one time to another.

Proof of past practice requires documentation and evidence. It is essential that when a past practice exists and is grieved, all possible documentation and facts be submitted along with the allegation of a violation of the past practice.

In order to be binding, past practice should have one or all of the aforementioned elements.

Grievance Investigation

Investigation is the most important step in the successful resolution of grievances. Article 17, Section 3 of the National Agreement defines the "Rights of Stewards."

Shop Stewards Have the Right To:

A—Obtain access to review documents.

B—Review files and other records.

C—Interview the grievant, other employees, supervisors and witnesses during working hours.

1. Discuss the complaint with the individual(s) concerned. Use the **SIX QUESTIONS** (Who, What, Where, When, Why, How) to gather as much information as possible.
2. Determine what contract provision, rules, regulations or policies you believe relate to the grievance.
3. Build the case with facts and documentation. **YOU** must prove the case; opinion means nothing without proof.
4. Emotions can play a part in grievances. **DON'T OVERLOOK** the emotional factors. For example, an employee may have been disciplined for failure to properly perform his duties. It may be that his spouse is being hospitalized, or he may have some personal problem that's affecting his job. Emotions can, in many cases, be determined and should be considered when processing grievances or disciplinary actions.
5. **DOCUMENTS** should include statements of witnesses and any other records or forms that will help you prove the case. Witnesses who sign statements **must** be willing to testify if necessary in grievance meetings with the employer and in arbitration hearings.

6. **Don't Rush A Grievance.** Treat each case as if it were your own personal grievance.

EXAMPLE: A member is charged with AWOL. The investigation must include:

1. Interview grievant.
2. Interview Leave Administrator/Supervisor.
3. Review Form 3971.
4. Review Form 3972.
5. Is grievant on restricted sick leave list?
6. Note reason(s) for absence.
7. Did grievant notify work location about his/her unscheduled absence?
8. Does grievant have documentation to justify the unscheduled absence?
9. Review Employee Labor Manual (ELM), Chapter 5.

. . . A Final Word

The APWU Shop Steward should discuss the grievance with the immediate supervisor only after conclusion of the investigation.

If a member approaches you with a grievance, make sure the member has been given permission for the discussion. The member should have notified his/her immediate supervisor that he/she has a grievance and wants an APWU Shop Steward for representation.

DO NOT immediately discuss the nature of the grievance with the immediate supervisor. Simply notify the supervisor that you will investigate the grievance and that after gathering facts and documentation, you will return for the formal Step 1 grievance discussion if you determine a violation exists.

During your initial interview with the grievant, TAKE THOROUGH NOTES. At this point the grievant's recollection of the facts and circumstances will still be fresh, and you will be able to compile detailed information that may weigh heavily with an arbitrator many months later.

PROPER DOCUMENTATION OF GRIEVANCES:

I. DISCIPLINE CASE

Notice (copy of the action)

3972

3971

Medical Documents

Past Elements

Status

Postal Inspector Investigative Memo

Any statements by the employee

Statements of the steward interview with: (See Article 17, Section 3)

Grievant

Any non-postal employee witnesses

Supervisor (Steward should ask why was the discipline issued)

Statements of witnesses

In the absence of any written statements by a witness, copy of the interview with that witness should be enclosed

Copy of supervisor's request to the installation head or his/her designee requesting the discipline

Concurring supervisor's interviews (Article 16, Sections 5 & 8)

Steward's statement of facts and contentions of the case

His/her understanding of why the discipline was issued and why he/she feels the action does not meet the test of just cause

Steward should include a statement that grievant be made whole

TIPS

Cite a violation of Article 16

Forward a copy of all proposals from the Postal Service to the Union relating to settlement of the grievance

Number all sheets in the file

Include a list on top of file of what is included in the file by numbers

Note: Do not include a copy of Form 2608 and 2609 in the Postal Service file

II. OVERTIME VIOLATION

Overtime Desired List (ODL)
By seniority

ODL by craft, section, or tour in accordance with Article 30

Clock Ring analysis of employees who worked

Clock Ring analysis of grievant

Copy of Job Description of the employees performing the overtime work.

Copy of grievant's Job Description

Steward's statement of how he/she believes the Overtime Desired List was violated

Operation number on which the overtime was worked (LSM -
Outgoing - Incoming)

20

When requesting a remedy for an overtime violation, list the names of persons to be paid.

Request overtime pay if an employee, not on the ODL, works in lieu of a person on the ODL. Do not accept a make up overtime day.

III. RESTRICTED SICK LEAVE

Notice

3971 - 3972

Medical documents

Statements from the employee if he/she was given a discussion by the supervisor

Dates and times of Discussion

Steward record of the interview with the supervisor concerning the dates and times in question

Nature of Problem

Sick Leave

COP - OWCP

Maternity Leave

Hospital Confinement

Copy of quarterly listing furnished by PDC

Did Supervisor provide written notice to employee that their name has been added to the restricted sick leave list? Why not?

Find out Supervisor's reasoning why he/she placed the employee on Restricted Sick Leave.

Did the supervisor use the quarterly list? If not, what did he/she use?

Check for violations of 513 of the ELM

If the employee has a chronic condition which the supervisor is aware of, the supervisor should not place the employee on Restricted Sick Leave.

Check other employees records to see if the grievant is being treated differently.

Check to see if the Postal Service knew of the grievant's disability when he/she was hired.

IV. STEP DEFERMENT

Notice deferring step increase

Notice must show a specific reason why the employee's step increase is being withheld

Date the employee received the notice

Date the employee's next step increase is due

Steward's interview with the supervisor. Steward should question:

Reasons why the step increase was denied

Dates - discussion was held with employee outlining deficiencies

Supervisor's suggestion to the employee on how to overcome his/her deficiencies

See Chapter 422.3 (ELM)

Eligibility for a periodic step increase is based on four conditions. An employee must have:

- A. Received and currently be serving under a career appointment
- B. Performed in a satisfactory or outstanding manner during the waiting period
- C. Not received an equivalent increase during the waiting period
- D. Completed the required waiting period

The following three classes of employees although they may not be working for the Postal Service maintain continuous employment:

Employees on Military Duty

Employees on Injury Compensation under the rules of OWCP

Employees on official LWOP to devote full or part-time to union positions

V. LETTER OF DEMAND

Copy of Letter of Demand

Copy of the audit (form 3294)

Copy of form 3368 (record of all audits conducted)

Steward's statement why he/she thinks the employee should not pay the shortage

Tips for the Shop Steward When Investigating a Window Shortage

Was the audit conducted within four (4) months of previous audit?

(Refer to Article 28 of the National Agreement)

Check employees form 3368 (record of all audits conducted)

Was the audit performed in a quiet area?

(Refer to Section 254 of the F-50)

The count must take place away from the window operation with adequate space to count

Were safe/vault combinations changed when persons knowing the combination were separated or transferred to a new position?

(Refer to Section 362.6 of the F-1)

Combination must be changed when

- A. A new or different safe is placed in service
- B. A person knowing the safe combination is separated or transferred to a new position
- C. The combination becomes compromised due to the opening of Form 3977 (duplicate key envelope) in an emergency

Were independent counts made?

(Refer to Section 261 of the F-50)

The supervisor and employee must conduct independent counts

Was the count completed by a supervisor and/or postal inspector and the employee and/or designated witness?

(Refer to Section 212 of the F-50)

Only postmasters, supervisors or postal inspectors can conduct examinations of stamp credit

Are all necessary signatures on the Form 3294 (copy of the audit)?

(Refer to Section 265.4 of the F-50)

Both copies of the Form 3294 are signed by the supervisor and employee

Did the Letter of Demand include the employees contractual rights to grieve?

(Refer to Section 473.1 of the F-1)

The Letter of Demand must contain the following statement: "bargaining employees' appeal procedures are contained in Article 15 of the Collective Bargaining Agreement."

Can a reasonable relationship be established between monies in the employee's trust or an overage in another credit of the employee?

(Refer to Section 472.2 of the F-1)

Can a reasonable relationship be established between the employee's shortage and the overage in another employee's credit?

(Refer to Section 472.2 of the F-1)

Prior to the employee being assigned his/her security containers, were the locks changed?

(Refer to Section 433.26 of the F-1)

Whenever an employee relinquishes control of an assigned stamp credit, the locks on the employee's stamp and cash drawers must be changed

24

Were the grievant's duplicate keys sealed in a Form 3977 (Duplicate Key Envelope) and was he/she allowed to designate two (2) witnesses?

(Refer to Section 433.23 of the F-1)

An employee must be granted the opportunity to be present whenever his/her accountability is audited. If not available there must be a witness of his/her choice present

Has an annual exam been made of all locks and keys in the unit?

(Refer to Section 433.27 of the F-1)

To safeguard each clerk stamp credit the supervisor must make an annual exam of all locks and keys except duplicate keys in Form 3977

Did any Postmaster, supervisor or employee have access to the stamp credit of the grievant?

(Refer to Article 28 and Section 433.22 of the F-1)

No employee, supervisor or postmaster may have access to the stamp credit of another employee

Was the equipment assigned to the employee examined by the supervisor and employee to determine that it provided proper safekeeping of the stock?

(Refer to Section 141.2 and 142 of the F-1)

Equipment must be examined by the supervisor and employee to determine that it provides proper safekeeping
Employees must notify their supervisor in writing if their equipment does not provide proper security
Supervisors must take immediate action to correct security deficiencies

Is an inventory of Form 3977 kept? Were all Forms 3977 examined every six (6) months? Does the USPS have a written record of the exam?

(Refer to Section 362.4 of the F-1)

At least once each 6 months physically examine each Form 3977 (Duplicate Key envelope) to be certain it is on hand and intact

Place a written, dated, signed report of the inventory

VI. SUPERVISORS PERFORMING BARGAINING UNIT WORK

Supervisor's name

The Supervisor's Job Description

The work performed by the Supervisor

The area where the work was performed

The craft designated to perform the work

Date and time the work was performed

Signed statements from witnesses who saw the supervisor performing the work

A statement of the interview with the supervisor performing the work.

TIPS

If the supervisor states it was an emergency, find out:

The nature of the emergency

Article 3F of the National Agreement defines an emergency as an unforeseen circumstances or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature

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If the supervisor states he/she was training the employee, ask:

Who were you training

How long did the training last

Has the employee had previous experience

VII. AWOL CHARGE

Copy of 3971 with reason for denial of leave request

Statement from grievant

Copy of the 3972

Copy of all relevant documents (Doctor's Statement, slip for repair to automobile, etc.)

Statement from Steward's interview with Supervisor

TIPS

When interviewing the Supervisor, find out why he/she cited the AWOL charge

If evidence was presented by grievant, find out why it was unacceptable

If the Supervisor alleges that the grievant didn't call, find out from grievant who took the call, time of day and tour of duty

If documentation was requested by the Supervisor, determine why the grievant failed to submit the documentation

Check for all discrepancies in management's case

Review the 3972

Determine if the grievant is being treated differently than other employees

VIII. DENIAL OF ANNUAL LEAVE REQUEST

Copy of 3971 denying the leave request

Copy of the leave book

Copy of the Local Memo

Names of employees granted leave with less seniority than grievant

Statement from Shop Steward as to why he/she feels the Local Memo has been violated

TIPS

Check the leave book to determine if a violation exists

Determine if the leave request was denied during Choice Vacation Period

If the leave request was denied during the Non-Choice Vacation Period, determine if your LMOU provides for incidental leave request

Determine has the maximum number of employees as guaranteed by your LMOU been granted leave

The local union should always request the compliment of employees by work assignment and tour prior to submission of Choice Vacation Request

IX. SCHEDULING EMPLOYEES TO WORK ON A HOLIDAY

Copy of the Local Memo outlining the "pecking order"

Copy of the posted list soliciting volunteers to work

Clock ring of employees not working the full eight hours on the holiday

A list of employees not required to work on the holiday

Copy of the posted holiday list scheduling employees to work

TIPS

Casuals and PTF's must be utilized to the maximum extent possible before drafting

Volunteers should be solicited prior to drafting

Transitional employees will be scheduled for work on a holiday or designated holiday prior to any full-time nonvolunteers being required to work their holiday or designated holiday

X. DENIAL OF LIGHT DUTY REQUEST

Copy of the letter requesting light duty

Copy of the letter denying the light duty request

Names of employees requesting light duty within the past year

Names of employees awarded light duty request

Names of employees who were not awarded light duty request

Letter from the physician outlining the employees restrictions

Copy of Local Memo

TIPS

Refer to the Employee Labor Relations Manual (ELM) 546.141

USPS must make every effort toward assigning employee to light duty consistent with their medically defined work limitation

If adequate work is available, employees should be assigned to their craft; in the work facility to which the employee is regularly assigned; within the employee's regular hours of duty

Employees may be assigned outside of the work facility only if there is not adequate work available within the employee's limitation

Step 1 Of The Grievance Procedure

It is the responsibility of the steward to insure fair treatment of employees and to protect their rights under the terms of the agreement.

You are required to use good judgment and to assess problems objectively and intelligently. Your analysis of the situation, the facts, the documents, the use of witnesses and your presentation should be thoroughly thought out prior to approaching the supervisor to discuss Step 1.

Both parties have a right to settle in whole or in part, and the union has the right to withdraw. Settlements at this level are not precedent-setting, and resolutions should be approached on the basis of problem-solving rather than confrontation.

Parties may agree to extend time limits, if necessary, as appropriate.

WHO DISCUSSES THE GRIEVANCES?

The employee and/or the union and the immediate supervisor. Employees should be discouraged from meeting with supervisors without a union steward.

UNION DEFINED:

Certified steward or union representative.

TIME LIMIT TO INITIATE GRIEVANCES:

Fourteen (14) calendar days from the time of the infraction or when it may be reasonably assumed the union or the employee learned of the infraction.

Discussion takes place between the employee and/or union and a management representative.

TIME LIMIT FOR MANAGEMENT RESPONSE:

Five (5) days unless parties agree to extend. Extension should be in writing, dated and signed by both parties.

DISCUSSION IS ORAL

The steward should request that the supervisor initial the standard grievance form (see page 21) attesting to the date of the decision.

The Union may appeal to Step 2 within ten (10) days after receipt of supervisor's decision if the grievance was denied.

The appeal is made on the standard Step 2 grievance form. See pages 20 and 21.

AMERICAN POSTAL WORKERS UNION, AFL-CIO

STEP 1 GRIEVANCE OUTLINE WORKSHEET

DISCIPLINE (NATURE OF) OR CONTRACT (ISSUE)				CRAFT		DATE		LOCAL GRIEVANCE #		USPS GRIEVANCE #	
UNIT/SEC/BR/STA/OFC			DATE/TIME		USPS REP - SUPR			GRIEVANT AND/OR STEWARD			
STEP 1 DECISION BY (NAME AND TITLE)							DATE AND TIME		INITIALS		INITIALING ONLY VERIFIES DATE OF DECISION
GRIEVANT PERSON OR UNION		(Last Name First)		ADDRESS		CITY		STATE		ZIP PHONE	
SOCIAL SECURITY NO.		SERVICE SENIORITY/CRAFT		STATUS	LEVEL	STEP	DUTY HOURS		OFF DAYS		
									<input type="checkbox"/> SAT <input type="checkbox"/> SUN <input type="checkbox"/> MON <input type="checkbox"/> TUE <input type="checkbox"/> WED <input type="checkbox"/> THU <input type="checkbox"/> FRI		
JOB#/PAY LOCATION/ (UNIT/SEC/BR/STA/OFC)				WORK LOCATION CITY AND ZIP CODE					LIFETIME SECURITY		VETERAN
									<input type="checkbox"/> Yes <input type="checkbox"/> No		<input type="checkbox"/> Yes <input type="checkbox"/> No

Notes:

(a) Problem:

(b) Background:

(c) Documents:

(d) Corrective Action:

(e) Management's Response:

REQUIRED GRIEVANCE DOCUMENTATION

The following documentation must be included when filing these types of grievances:

DISCIPLINE

Discipline Notice
Prior Discipline Notices (Cited As Past Elements)
Did Grievant Receive Discussion-If Not, Make Notation-If So, Give Date of Discussion
Did Supervisor Inform Grievant of Intent To Initiate Discipline-If Not, Make Notation-If So, Give Date Include In Grievant's Statement)
Grievant's Statement
Witness Statement, If Any
Inspector's Investigative Memorandum
Supervisor's Interview
Evidence of Higher Level Concurrence
Leave Slips, All Related Evidence/Records, Etc.

OVERTIME

Overtime Desired List(s)
Names of Employees Who Worked
Names of Employees Who Should Have Worked
Grievant's Statement
Steward's Statement/Comment
Number of Hours/Days Involved
Clock Rings/"Etc." Reports of Employees Involved
Overtime Duties Performed

HOLIDAY SCHEDULE

Holiday Schedule
Seniority List(s)
Names of Employees Who Worked
Names of Employees Who Should Have Worked
Grievant's Statement
Steward's Statement

ATTENDANCE

Form 3971 (Leave Slips)
Form 3972 (Leave Analysis) For Prior 2 Years
Form 3956 (Medical Unit Slip), If Applicable
Medical Evidence
Prior Discipline, If Any
Discussion Date, If Any
Grievant's Statement
Steward's Statement

A.W.O.L.

Form 3971 (Leave Slip)
Medical/Emergency Evidence
Grievant's Statement
Witness Statement, If Any
Steward's Statement

MEDICAL EVIDENCE (REIMBURSEMENT)

Medical Evidence
Bill, Receipt or Canceled Check
Grievant's Statement
Steward's Statement

MEDICAL LEAVE

Form 3971 of Grievant(s)
Form 3971 of Employee With Approved Leave
Leave Book
LMOU Leave Provisions
Grievant's & Steward's Statements

STEP INCREASE

Notice of Withholding Step Increase
Date Employee Received Notice
3972 Form (Leave Analysis) If Grievant Has Attendance Related Discipline
Discipline Record
Grievant's & Steward's Statements

SAFETY & HEALTH

PS Form 1767
Any Other Postal Form And/Or Related To Safety Violations

LETTER OF DEMAND

Letter of Demand Notice
Forms 3368, 3369 & 3294
Forms 1412 For Audit Period
Money Order, If Applicable
Drawer Security
Grievant's & Steward's Statements
Forms 17 For Audit Period
Security Violation Report

JOB BID

Bid Card
Job Posting Notice
Successful Bidders Notice
Award Letter And/Or Date Notified By Postal
Grievant's & Steward's Statements

BARGAINING UNIT WORK

Statement From Employee(s) Witnessing Supervisor Working
Length of Time Supervisor Worked
Date & Location
Type of Work Performed
Use Union "Bargaining Unit Work" Form

LIGHT DUTY

Grievant's Letter Requesting Light Duty
Management's Letter Denying Light Duty
Grievant's Medical Evidence of Restrictions
Names/Evidence of Employees Granted Light Duty Within Past Year
Names/Evidence of Employees Denied Light Duty During Past Year
Evidence of Work Available Within Grievant's Restrictions
Grievant's & Steward's Statements
LMOU Light Duty Provisions.

How To Write A Grievance

Record Answers To All 6 Questions

WHO:

Who is involved in the grievance? Name(s), unit, craft, seniority date, job classification, tour, etc.

WHAT:

What happened? Only facts, no opinions.

WHEN:

When did the grievance occur? On what date, at what time?

WHERE:

Where did the infraction take place? Exact location, section or area, city and state.

WHY:

Why is it a violation of the agreement?

HOW:

How can this grievance be resolved? What adjustment is necessary?

Preparing For Presentation

1. Fit your facts together.
2. Be prepared to present documents that support the case.
3. Consider the bearing of facts and documents on each other.
4. If uncertain in any area of the grievance, check with the Chief Steward or other Union Officer.
5. Consider objective of grievance and be prepared to request proper settlement.

NOTE: The shop steward must keep written records on all grievances and appeals. It is extremely important to obtain and document written statements, reports and as much evidence as possible for the grievance—especially supervisors' comments, even though the Step 1 discussion is oral.

Review your notes thoroughly with the grievant to ensure that your understanding of the grievant's account is what he or she meant. Make sure that you, the steward, understood exactly what the grievant said.

REMEDY

The corrective action requested (line 13 of the standard grievance appeal form) must be very firm, very simple and related to the nature of the grievance.

NEVER request that disciplinary action be taken against a supervisor. This request gives management an excuse to deny the appeal since they don't have to discipline supervisors—and they will not do so at the APWU's request. Contract language does not provide for it.

EXAMPLE: The senior employee is bypassed on the overtime desired list because the supervisor thought he/she left work early.

REMEDY: After obtaining all facts and proving the grievant did not leave early but was on duty:

The grievant be paid at the overtime rate for the missed opportunity on _____
(date)

Once a grievance is granted, at whatever step in the grievance procedure, always (especially in disciplinary cases) include the following language as part of the remedy: "All references and files shall be removed from the grievant's records and from management's records."

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In addition, always include the following line: "The grievant shall be made whole for loss of pay and other entitlements."



CHECKLIST FOR STEP 1 GRIEVANCES

Have I:

- ☐ answered all six questions, i.e., Who, When, Where, What, Why and How?
- ☐ checked appropriate contract provision?
- ☐ reviewed notes and examined all related data?
- ☐ checked witnesses?
- ☐ outlined my presentation?
- ☐ determined my approach to the supervisor?

Presenting The Grievance

Two skills are necessary to effectively present grievances:

- [1] The human relations ability to deal with employees and management.
- [2] A thorough understanding of the contract and the precedents which define the contract.

Even if you have a thorough knowledge of the agreement, unless you approach management with frankness, sincerity, and without hostility, you can expect anger and resistance.

The reverse is also true. You are likely to react with anger to a supervisor who treats you in an insulting way.

Hot arguments and shouting matches should be avoided. If you stay cool, managers eventually realize that they can't fluster you. They will understand that you are trying to be professional and thorough. Gradually, they should respond to you in a similar professional manner. Just be patient. And remember, research proves that an angry human being can't think clearly and swiftly. Calmness helps you win cases.

In short, acting calmly and professionally, more than anything else, leads to fair, frank and productive relationships with management.

During the grievance discussion, take careful notes so that you will have a record of management's responses and comments.

THE DECISION

A favorable decision is always anticipated and welcomed. Insure that the grievant and the union stewards/officers receive a copy. Insure that the decision is implemented immediately and known to all parties, including management officials.

Many times favorable decisions are not implemented or are ignored by management. Caution must be exercised to prevent this.

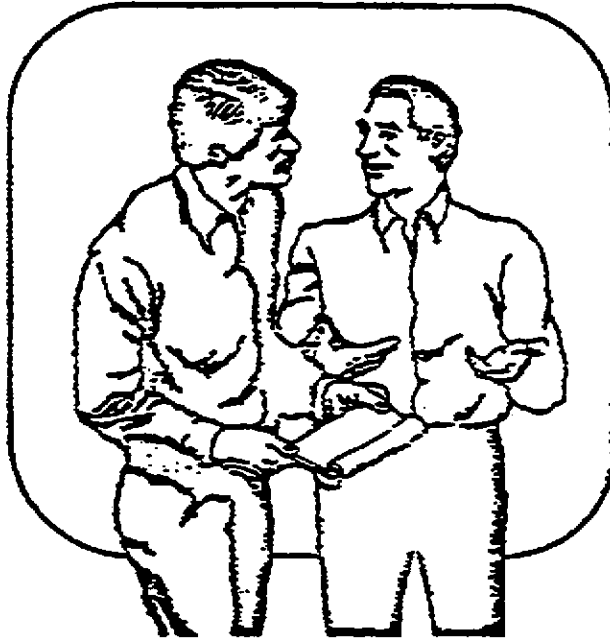
The sample form letter on the next page is one way of alerting management that a favorable decision has been received and that compliance is expected.

Remember to insist that all references and files be removed from the grievant's records and from management's records and that the grievant be made whole for loss of pay and other entitlements.

Step 2 Of The Grievance Procedure

The method of appeal from Step 1 to Step 2 is a matter of local union policy.

Ideally, someone other than the steward makes the appeal to Step 2. This method provides an objective review and also the opportunity to get additional facts and documents, if necessary.



Step 2 offers the next opportunity for grievance resolution; it provides the parties with the opportunity to discuss the case in detail, and requires full disclosure of facts and documents by both parties.

The parties may settle the grievance in whole or in part. Settlements are not precedent-setting unless both parties so agree mutually or develop an agreement to dispose of future similar or related grievances in the same manner.

Step 2 Procedures

1. A standard Step 2 grievance form must be filed with the installation head or designee. (In any associate office of 20 or less employees, the employer shall designate an official outside of the installation as Step 2 official and shall so notify the union's Step 1 representative.)
2. The installation head or the designee will meet with the steward or designated union representative within 7 days following receipt of the appeal to Step 2. If Management does not schedule the meeting within 7 days, the case should be appealed to Step 3.

3. Both parties should disclose facts and contractual provisions relied on for their respective positions, and the union must also state the remedy desired.
4. Both parties must cooperate to develop necessary facts, including exchange of relevant papers and documents, and may mutually agree to interview witnesses.
5. In discharge cases, either party may present no more than two witnesses; however, the parties may mutually agree to interview additional witnesses.
6. Settlements and withdrawals at Step 2 shall be in writing and are not precedent-setting unless the parties specifically so agree or develop an agreement to dispose of future similar or related grievances in the same manner.
7. When agreement is not reached, the employer's decision must be furnished within 10 days after the Step 2 meeting unless the parties agree to extend the 10-day period. If Management fails to meet this time limit, the union should appeal to Step 3.
8. The decision must include: (a) statement of the employer's understanding, (b) all relevant facts, (c) contractual provisions involved, and (d) detailed reasons for denial of the grievance.
9. The union representative should, within 10 days of receipt of the Step 2 decision, transmit to the employer representative a written statement setting forth corrections or additions deemed necessary by the union. The statement becomes part of the grievance file and *does not affect time limits for appeal to Step 3.*

STEP 2 GRIEVANCE APPEAL FORM

12 DETAILED STATEMENT OF FACTS/CONTENTIONS OF THE GRIEVANT

13 CORRECTIVE ACTION REQUESTED

SIGNATURE AND TITLE OF AUTHORIZED UNION REP

How To Complete The Step 2 Grievance Form

The Step 2 Grievance Form *must* be filled out carefully and completely. Each line *must* be completed:

Line 1—Nature of discipline or contract issue; the date on which the appeal is made; union local grievance number.

Line 2—Name of USPS official to whom appeal is made; name of installation; telephone number.

Line 3—Local Union's business address

Line 4—Name of APWU Representative authorized to discuss Step 2; telephone numbers where that individual may be reached.

Line 5—Name of Local Union President; telephone numbers where that individual may be reached.

Line 6—Installation where Step 1 was heard; date/time discussion took place; name of supervisor who discussed the grievance at Step 1; name of grievant and/or steward present at the discussion.

Line 7—Name of supervisor who made the decision; date/time decision was made; initials of supervisor making the decision attesting to date/time of decision.

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Line 8—Grievant (or Union if class action), address and telephone number of same.

Line 9—Social Security number of employee; seniority date; service & craft; employee classification; level; step; duty hours; off days.

Line 10—Name of installation where incident occurred; zip code of installation where incident occurred; whether or not employee was hired before or after 9-15-78 (lifetime security); and whether or not employee is classified as a preference eligible (veteran).

Line 11—Cite contract article violated.

Line 12—What happened and reasons for making the appeal.

Line 13—What the Union feels is required to correct grievance.

To Whom Is The Step 2 Grievance Appealed?

The Step 2 official form, once completed and reviewed to insure accuracy, is appealed to the installation head or designee. To safeguard time limits, it is wise to use certified mail, return receipt requested.



CHECKLIST FOR STEP 2 GRIEVANCES

HAVE I:

- ☐ considered supervisor's response?
- ☐ reviewed notes and examined all related data?
- ☐ determined any additional facts?
- ☐ prepared the appeal in writing, utilizing the standard grievance appeal form?
- ☐ stayed within time limits of appeal?
- ☐ recorded notations on Step 1 for retention in file?
- ☐ notified aggrieved of appeal action?
- ☐ Has supervisor initialed grievance form attesting to date of decision?

Step 3 Of The Grievance Procedure

Appeals to Step 3 should be made only when all efforts for resolution at Step 2 have been exhausted. This could include extension of time limits, if appropriate, presentation of new facts, if available, and settlement, in part, after consultation with the grievant or local union officers.

If the appeal is made to Step 3, the case file sent to the appropriate National Field Officer *should be complete*.

1. A Union appeal of an adverse decision from Step 2 to Step 3 must be made within 15 days after receipt of the employer's decision, unless both parties agree to extend the time limits. If the Union fails to meet this time limit, the case is lost and cannot be processed further.
2. The appeal must include: (a) the standard grievance form, (b) the employer's written Step 2 decision, and if filed, (c) the Union's corrections or additions to the Step 2 decision.

Step 3—Local Information

1. Appeals from Step 2 shall be in writing to the Regional Director for Employee and Labor Relations with a copy to the employer's Step 2 representative, and shall specify reasons for the appeal. A standard Step 3 appeal form *must* be used.
2. The grievant shall be represented at Step 3 by a union regional representative or designee.
3. The Step 3 meeting between the parties at the regional level shall take place within 15 days after the case has been appealed to Step 3.
4. The parties may mutually agree to refer the case back to Step 2 for development of additional facts and consideration.

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Step 3—Responsibility and Options (National/Regional)

- (a) Each party is responsible for assuring that all facts and contentions have been developed and considered.
- (b) The APWU representative may settle or withdraw the grievance in whole or in part.
- (c) The employer may grant the grievance in whole or in part.
- (d) Where the parties mutually agree that facts and contentions were not adequately developed in Step 2, they may return the case back to the Step 2 level for additional facts and consideration at that level.

- (e) In such an event the parties' representatives at Step 2 will meet within seven (7) days after the grievance is returned to Step 2.
- (f) Thereafter, the time limits and procedures applicable at Step 2 shall apply.

Step 3—Decision and Options

- (a) The Step 3 decision shall be provided to the Union's Step 3 Representative within fifteen (15) days after the Step 3 meeting. The parties may agree to extend this time limit.
- (b) The decision must state reasons for the decision in detail and include statement of facts not previously set forth in the record appealed from Step 2.
- (c) The employer's Step 3 decision will state whether the employer's Step 3 representative believes there is an interpretive issue under the National Agreement involved.
- (d) The union may appeal to arbitration at the Regional level within twenty-one (21) days after receipt of Step 3 decision, provided it is not an interpretive issue.
- (e) If either party feels an interpretive issue exists, the APWU representative may appeal to Step 4 within twenty-one (21) days of receipt of the decision.

STEP 3 GRIEVANCE APPEAL FORM

NATIONAL BUSINESS AGENT

Authorized Union Rep.



CHECKLIST FOR STEP 3 GRIEVANCES

(This checklist for National Business Agent ONLY. Check documents included in file.)

- ☐ Step 1 discussion notes, if any
- ☐ Standard Step 2 grievance appeal form
- ☐ Step 2 meeting discussion notes
- ☐ Documents of Step 1 & 2 presentation
- ☐ Copy of Step 2 written decision
- ☐ Copy of additions/corrections at Step 2, if any
- ☐ Copy of appeal to Step 3

WAYS TO REDUCE STEWARDS STRESS

BE INFORMED

- ♦ Know your contract
- ♦ Know your rights
- ♦ Know what is going on in the union
- ♦ Know what is happening in your workplace
- ♦ Know what is happening to your members
- ♦ Know where to find the answers to problems
- ♦ Know what resources are available to you - learn to use them

GET SUPPORT FROM YOUR ORGANIZATION

- ♦ Have steward's meetings regularly
- ♦ Talk about the problems you face as a steward
- ♦ Talk over difficult grievances
- ♦ Help each other
- ♦ Learn to ask for help
- ♦ Develop a communication network
- ♦ Have someone designated to cover for you
- ♦ New stewards should have someone to learn from
- ♦ Develop a Stress Committee within the Union
- ♦ Make sure you are trained to do your job
- ♦ Have a steward dinner, party or picnic
- ♦ Don't become isolated

DEVELOP YOUR BASE WITH THE MEMBERS

- ♦ Know the members you are responsible for
- ♦ Ask them if things are OK periodically
- ♦ Don't wait for them to come to you
- ♦ Find out what is bothering them
- ♦ Be personally concerned ... send get well cards, etc.
- ♦ Call up members whose leave is just about up
- ♦ Make sure a worker who is out has their insurance updated
- ♦ Take up a collection if people have had accidents, etc.
- ♦ Remind people of meetings ...
- ♦ Inform them of union activities and issues
- ♦ Identify problems for workers who aren't complaining
- ♦ Let people know what you are doing when out on union business
- ♦ Keep members informed on the status of their grievances
- ♦ Let them know why it is taking a long time
- ♦ Introduce yourself to new members

INVOLVE YOUR FAMILY IN THE UNION

- ♦ Don't just complain about the union
- ♦ Let them know why the union is important for them
- ♦ Tell union stories ... union history
- ♦ Let them know you appreciate their support
- ♦ Take them to union activities

BE PROUD OF BEING A STEWARD

- ♦ Remember why you are a steward
- ♦ Remember why you are in the union
- ♦ Wear something that shows you are proud of the union
a button, jacket or cap
- ♦ Learn the History of Labor
- ♦ Develop your stewarding skills
- ♦ Remember who your allies are and what you are fighting
for

PAY ATTENTION TO YOURSELF

- ♦ Learn relaxation techniques and use them
- ♦ Watch your nutrition
- ♦ Do some regular exercise
- ♦ Learn your own stress signals and listen to them
- ♦ Learn to say no when you have to
- ♦ Schedule family and social time
- ♦ Don't offer to do things you really won't be able to do
- ♦ Let people know when things are getting to be too much
- ♦ Don't say things are OK, when they aren't

20 IDEAS FOR SHOP STEWARD MEETINGS

How do you build an effective team of shop stewards who are well informed and do a good Job of enforcing the national and local contracts? Here are 20 ideas for programs that will help develop the skills of shop stewards in your local.

As you look through these 20 suggestions, you may find three of four that are particularly applicable to your local. Pick them out and go to work trying to make them happen! Putting them in to practice and running a good meeting for shop stewards will take a lot of hard work, careful planning, and good old common sense.

1. SHOP STEWARD'S JOB

Ask the group of shop stewards to comment on the question, "What is the biggest problem a new shop steward faces?" (If the group is large, the stewards can write their reply on a slip of paper and hand it in to the instructor.)

Once the stewards have answered, the union officers present--such as the local union president, the chairman of the Grievance Committee, or the business agent--should add their remarks. The responses should be summarized by the instructor.

52 Try to present at least four of five main points that are important for a new shop steward to remember. This exercise is usually a good review for experienced shop stewards.

2. STEWARD'S KIT

Prepare a list of pamphlets and other information a steward should have handy in order to do an effective job. Make sure each steward has received the APWU Shop Steward Training Kit (available from the Research and Education Department). Discuss with the stewards what information the local already has and where they can obtain other items Such as seniority lists, holiday lists, overtime desired lists, bid-job lists, etc.). Check over this material and agree on what the local can obtain for the stewards.

3. GRIEVANCE WRITING

Pass out a sheet of instructions on how to write a grievance, along with a sample grievance situation and blank standard grievance forms.

Have the shop stewards discuss the contract violation(s) involved in the sample grievance; and then have them write it up on the blank form.

The instructor should go over the ways various stewards have written up the grievances and discuss how it should be worded.

4. GRIEVANCE PRESENTATION

Distribute a sample grievance situation. Ask the shop stewards what they would do in preparing to argue the case with the immediate supervisor; then have a couple of stewards role-play the grievance, with one acting as the steward. After they have acted for several minutes, discuss the way they presented the grievance and what the role-players did best. In order not to "stigmatize" the steward who plays the part of the supervisor, it is a good idea to have them act out the situation a second time, reversing their roles. They will often do a better job the second time around.

5. CONTRACT INTERPRETATION

It is not very effective to read the contract or lecture about it. Instead, the instructor should prepare a sheet of five or six specific questions about one or two sections of the contract. The group can then work out the correct answers. A couple of local union officers and a representative from the Grievance Committee should act as a resource panel for the group.

6. UNION DUES BREAKDOWN

Have the local's secretary-treasurer put on the blackboard a breakdown showing what part of the dues goes to the local, the national, and to other areas, such as conventions, seminars, etc. Have the group discuss what services are performed by each one of these areas.

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The secretary-treasurer and other officers can act as a panel and be prepared to add to the group discussion and answer questions.

7. CONSTITUTION

Prepare a sheet with four or five questions about how the union is run, as set forth in the local constitution (e.g., "When are local officers elected?"). Distribute the questions along with copies of the local constitution. The stewards may not be able to find the answers to all of the questions, but they will begin to become familiar with various parts of the constitution.

Go over the questions with the group. and discuss the correct answers. One or two officers can act as a resource panel to answer other questions that will come up in this session.

8. RETURNING DELEGATES

When the local sends delegates to an important union event, such as the national convention or a statewide conference, the Education Committee can use delegates for the stewards' program. Have the delegates make a report to the steward body as soon as possible. Reports should emphasize matters of special interest to the stewards (such as what the conference meant for the union, why it was held, what important things were taken up that will affect the members). If there were two or more delegates, they can serve as a panel; each one of them can cover a part of the report. Hold the report to about 10 or 15 minutes so there will be time for questions.

9. USING VISITORS

Use visitors to provide variety to your educational programs. Frequently, officers from the national or state APWU or representatives from other unions are available at the time of the stewards' meeting. Use their expertise to show the stewards what is going on in other parts of the union or the labor movement. In general, it is a good idea to have the visitors talk for only 15 minutes and leave the remaining time for discussion. Prepare a few questions to ask the visitors to get the discussion going.

10. NEWSPAPER SESSION

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Your local union newspaper can be used to educate stewards about the APWU. Take a recent issue of the paper and discuss a feature article that is of particular interest to the stewards. Have the stewards discuss what they learned when they read the article. Ask them what the members said about it.

11. ANNIVERSARY DATES

Various dates can be used to educate stewards about labor history. A meeting around Labor Day can focus on the history of Labor Day and the labor movement in general. Give a short report on the event being honored and why it is important, or show a film if there is one available on the subject. Allow time for group discussion.

12. PREPARING FOR COLLECTIVE BARGAINING

Before the local's Bargaining Committee sets its goals, discuss with the stewards what they feel needs improving in the local contract. Members of the Bargaining Committee can serve as resource experts in this session, and they can discuss the various improvements suggested.

The meeting can focus on important sections of the contract, such as leave, bidding procedures, etc. Some of the suggestions made by the stewards should prove helpful, and some may not; but the discussion will create interest and support for local negotiations.

13. DURING LOCAL NEGOTIATIONS

The period after negotiations start and before a memorandum of understanding is reached is one that is often accompanied by rumors and questions on the workroom floor.

A good session can be set up by asking stewards to raise the questions they hear on the workfloor. Again, a panel of members from the Bargaining committee can answer the questions raised. Such a session might be introduced by a brief report from the Bargaining Committee on what has been happening in negotiations. This session can help correct misinformation and win increased membership support for the committee.

14. AFTER CONTRACT SIGNING

After settlement of the National Contract and local Memorandum of Understanding, there are many questions to anticipate about the new agreements. There are also details that stewards need to know. A steward session on contract changes is of interest right after negotiations. Begin with a short report from the local union's president. Follow this with time for stewards to raise questions they have heard members asking about the new contract. Also cover any new contract procedures the stewards need to follow.

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If contract information is being prepared for the membership, advanced copies should be shared and discussed with the stewards so they can anticipate questions the members may have.

15. WORKERS' COMPENSATION

A local union officer who is familiar with the law can give a short talk on workers' compensation. A summary of the law can be distributed to the stewards. A representative from the local's Education Committee should point out what stewards should tell a member who has an injury about his or her rights under the law. If the local has a procedure for handling workers' compensation cases, this should be explained.

The session should end with a summary of the improvements that are needed in the law (e.g., compensation for Carpal Tunnel Syndrome). The pamphlet "When Injured at Work, What to Do" can be obtained from the APWU's Human Relations Department and distributed to the group.

16. VOTING RECORD SESSION

Obtain the voting records of U. S. senators and representatives and of city and state legislators from your union's Legislative Department. A copy of the voting record can be distributed to every steward and a report given on key bills and the way legislators voted. If this is done throughout the year, stewards will gain some background on the issues and can tell the members how their representatives voted when election time rolls around.

17. LETTERS TO CONGRESS

When Congress or the state legislature is in session, bills of importance to the entire labor movement are considered.

Have a member of the local's Legislative Committee give a report outlining the provisions of a bill and why the APWU supports or opposes the legislation. Information on these issues can be obtained from the APWU's Legislative Department, "Communicating Directly With You, The Members," the APWU "News Service" bulletin, or The American Postal Worker.

56 After a short question and answer period, explain the importance of writing letters to legislators. Explain, for example, that personal letters are more effective than form letters. Pass out stationery and envelopes; then write on the blackboard the addresses of all the legislators who represent your members.

18. COPA COLLECTION

The stewards' meeting can be used to promote the APWU COPA drive. Have the committee in charge of the COPA collection describe the drive and the reasons for it to the stewards. Encourage the stewards to ask the committee any questions they have heard on the workfloor about COPA. Have one steward practice soliciting a COPA pledge from a steward playing the part of a member. Two stewards can act this out before the whole group, or the whole group of stewards can pair off and practice on each other.

The discussion should be summarized afterward.

19. PAMPHLET MEETING

The instructor should obtain a list of all cost and non-cost items available from the APWU National Headquarters. Copies of all this material should be distributed to each shop steward. Have a member of the Education Committee give a short report on each pamphlet. Afterwards, solicit questions from the stewards about each item.

20. SIGNING UP NEW MEMBERS

Organizing is extremely important. Make sure each steward has received a copy of the APWU Organizing Action Kit (available from the Organizing Department). Hold a meeting on ways to sign up new members. Stewards who have done an outstanding job can act as a panel and tell the group how they have signed up members in their work locations. One or more of the officers can talk on this topic.

Stewards should be asked to discuss any problems they have had in signing up new members. Two stewards can role-play, one taking the part of the reluctant employee and the other that of the shop steward. Allow time afterwards for discussion.

In planning your stewards' meetings, consider the issues on the workfloor. What are the stewards concerned about? What kinds of programs can help the most in solving their immediate problems?

The success of your program will depend on your local Education Committee's ability to understand and satisfy the needs of the stewards. It will be helpful to discuss with the stewards the kinds of programs they feel they need; then get some of them to participate in planning the programs. Other considerations to double-check in running successful stewards' meetings are: (1) Is the time and place of each meeting convenient? (2) Do the meetings receive good publicity, including a written notice? (3) Do top officers of the local participate in stewards' meetings? (4) Does the Education Committee meet to evaluate each session and discuss how to make the next one better? (5) Do the stewards have ample opportunity to participate in the meetings? (6) Are current workplace problems discussed? (7) Do the meetings help shop stewards answer questions raised by members on the workroom floor?

CONTRACTUAL VIOLATIONS

The following Contract Articles can be used in any combination in grievances as long as they are relevant to the case and applicable. Check to see if they fit the circumstances of the grievance. Be sure of how they apply before citing them.

ARTICLE 1

Applies in instances where management performs duties regularly and routinely performed by Bargaining Unit Employees in violation of those occasions identified or in smaller offices when the Postmaster's performance of bargaining unit work increases while the hours of the bargaining unit decreases.

ARTICLE 2

Applies if the grievant was treated differently than others in a similar situation. Elements of discrimination (e.g., race, color, sex, religion, etc.). Disparate treatment can also be made without getting into specific purviews.

ARTICLE 3

Applies in that management does not have an absolute right to violate the contract or discipline and discharge employees. Their rights are subject to laws, regulations and the contract. Cite any violations made by management.

ARTICLE 4

Applicable when new machinery/automation impacts the number and work schedules of employees.

ARTICLE 5

Can be cited for Unfair Labor Practices when dealing with Steward's discipline or group discipline. It is also applicable when management takes action on its own when consultation (input) with the Union is required.

ARTICLE 6

Applicable in instances where an employee improperly lost credit toward "no-layoff" protection.

ARTICLE 7

Applies to "casual" violations when employees from one craft improperly work in another craft or when the Union contends that PTF's should be converted to full-time.

ARTICLE 8

To be relied upon and cited when there are overtime violations or when management changes a full-time work schedule from consecutive rest days to "split" rest days.

ARTICLE 9

Can be cited along with Article 8 for wage losses.

ARTICLE 10

Applies to attendance cases, leave issues and AWOL.

ARTICLE 11

To be cited when there are improper holiday postings or scheduling violations.

ARTICLE 12

Applicable in instances where there are disputes regarding the seniority of employees or the reassignment/excessing of employees out of the section or installation.

ARTICLE 13

To be cited when management fails to provide light duty work to employees within their medical limitations or when employees are separated for medical reasons.

ARTICLE 14

Can be cited in safety violations, and especially in discipline for unsafe acts.

ARTICLE 15

Is the Grievance procedure which gives you (Steward/Grievant) the right to challenge discipline and other contractual violations.

ARTICLE 16

Must be cited in discipline cases. It is imperative to state that: *"the discipline imposed is not for Just Cause, is punitive and not corrective. The discipline should be rescinded and expunged and that the employee made whole."*

ARTICLE 17

Can be cited in all cases involving Steward's issues (see Steward's Rights booklet) and for denial of pertinent documents (see Article 31).

ARTICLE 18

APWU's acknowledgment that it will not sanction a strike or authorize its Steward's to encourage a work slowdown.

ARTICLE 19

Can be cited for management violating their own regulations especially ELM Code of Conduct, EL-921, Supervisor's Guide To Handling Grievances, Chapter 510 (attendance) and any other relevant regulations.

ARTICLE 20

Can be used for improper parking charges in which discipline was imposed or where management has failed to comply with the locally negotiated parking policy.

ARTICLE 21

Can be cited in any case where an employee may have filed an OWCP Claim or disputes over life insurance, health insurance or retirement coverages.

ARTICLE 22

To be cited when management fails to provide bulletin boards for the APWU.

ARTICLE 23

Applicable when management refuses access to a representative duly authorized by the APWU.

ARTICLE 24

To be cited when APWU representatives are denied time off for Union Conventions.

ARTICLE 25

Applicable when an employee is not properly paid for duties performed which are ranked at a higher level.

ARTICLE 26

To be cited in disputes involving uniform or work clothes allotments.

ARTICLE 27

Applicable when an employee requests reimbursement for personal property damaged while performing postal duties.

ARTICLE 28

To be cited when management requires monies from an employee.

ARTICLE 29

Relates to the revoking of a government driver's license.

ARTICLE 30

Provides for negotiation of the Local Memorandum Of Understanding by local management and Union.

ARTICLE 31

To be cited when management fails/refuses to provide the information requested by the Union.

ARTICLE 32

Applicable when management improperly contracts-out work previously performed by Bargaining Unit Employees.

ARTICLE 33

Applies to disputes when an employee was improperly denied a promotion.

ARTICLE 34

To be cited when management requires an employee to meet production quotas on an hourly/daily basis.

ARTICLE 35

Relevant in cases involving substance abuse.

ARTICLE 36

To be cited when an employee is denied mileage reimbursement for using their personal vehicle for Postal business.

ARTICLE 37

Applicable to all violations of the Clerk Craft including seniority, duty assignments, posting and bidding, etc.

ARTICLE 38

Applicable to all violations of the Maintenance Craft including seniority, duty assignments, posting and bidding, etc.

ARTICLE 39

Applicable to all violations of the Motor Vehicle Services Division including seniority, duty assignments, posting and bidding, etc.

ARTICLE 40

Applicable to all violations of the Special Delivery Craft including seniority, duty assignments, posting and bidding, etc.

SAMPLE CONTENTIONS/RESOLUTIONS

AWOL: (Holiday)

Articles: 11, 15

The grievant submitted 3971 in a timely manner requesting to be excused on (Date), her scheduled holiday. Grievant was issued an Awol by management.

Grievant informed management of the need to be excused from work on (Date), in a timely manner on PS 13.

The Local request that the eight hour AWOL for (Date) be deleted, grievant is excused and holidays pay inserted for (Date).

AWOL: Denied A/L (Annual Leave)

Articles: 9,10,15, LMOU-10, ELRM-510

The grievant submitted 3971 requesting annual leave (A/L) for period # (Beginning Date through Ending Date). His or her request was disapproved by SDO (Name). Grievant had no previous vacation for (Year) leave year, and SDO (Name) is unilaterally denying the grievant leave, as provided for in the LMOU (Local Memorandum of Understanding) and CBA (Collective Bargaining Agreement). The LMOU specifies the vacation schedule. Evidence shows (1547) that #5 non choice was approved. #5 is (Date) through (Date), as per the posting. Art. 10, sec 4d mandates advance commitments to be kept.

The Local request that AWOL's be deleted and LWOP inserted for period #5 (Beginning Date) through (Ending Date).

AWOL: 55 mins.

Articles: 8,9,10,15,19

The grievant received an AWOL for being late for .55 minutes. On his or her way to work he or she was entering the freeway and his or her car skidded on the on ramp and went into the bushes. When grievant arrived at work, he or she discovered that he or she was issued AWOL for being late .55 minutes. This was an emergency situation.

The AWOL was an Automatic AWOL issued to the grievant. The supervisor violated the CBA in refusing to negotiate on this AWOL at the lowest possible level. This was an emergency situation and the leave request should have been approved. The supervisor did not consider the welfare of the employee which was counter productive.

The Local request that the AWOL issued on (DATE) for .55 minutes be rescinded and approved leave be inserted.

AWOL: NO Call

Articles: 8.9,10,15,19 ELRM 510, LMOU-10, Attendance Policy (If applicable)

Grievant called in on (Date) to request Emer. A/L because she had a flat tire on her car. She discovered that she was issued AWOL- No Call for (DATE), and the absence for (DATE). Grievant cannot recall the name of the technician she spoke with so she is given AWOL for (DATE). Grievant discovered that the original 3971 where she called in was lost.

The AWOL was automatically issued because someone misplaced or lost her 3971. This is not fair treatment toward the grievant. It is not the grievant's fault if she called in and someone lost her 3971. Grievant was off for two days in a row, the supervisor should approve both days and not approve one day and disapprove another day.

The Local request that the AWOL No Call for (DATE) be rescinded and approved leave inserted for eight hours.

BEHAVIOR/HOSTILE AND INTIMIDATING

Articles: 2,3,15,19

Grievant requested for a shop steward through her supervisor Mr/Mrs (NAME), but was met with hostility, negativity and unprofessional behavior and became a victim of supervisor's (NAME) vindictiveness. Supervisor (NAME) told grievant she did not need a steward and she will summons one when she feels like it. Grievant has been mistreated and is also a victim of supervisor's intimidating tactics, lack of respect and concern toward the grievant.

The Local request that Supervisor (NAME) refrain from this type of abusive behavior toward craft employees and that upper management take appropriate action in correcting the supervisor.

CLOCK IN / MGT'S REFUSAL TO ALLOW EMPLOYEE TO CLOCK IN:

Articles: 2,8,9,10,15,19 ELRM 510, LMOU 10, Local Leave Policy

Grievant was told by his supervisor (NAME) to take reappointment to a T.E. position. He was not allowed to clock in.

The Local request that grievant be paid eight hours for (DATE), and that the notice of no reappointment be rescinded and grievant be reappointed as a T.E. and made whole for all lost time, wages and benefits including interest.

CROSSING CRAFT DUTIES:

Articles: 2,3,7,8,9,12,14,38, ELM, LMOU

Tour 1 & 3 Technicians are being required daily at advance facer canceler to do the duties of quality control specialist/clerk. Information revealed that restructure of postal service a few years ago eliminated the needs and position of quality control clerks. Electronic Technicians are being required each day to take 100 pieces of

"rejected" mail, run it again through the advance canceler, identify and separate stacker sorter, no ink, no cancellation, inadequate stamp, phosphorus checks, ultraviolet check of each mail meter ink. Then one is required to tabulate the results.

The advance facer canceler "Daily Summary Report" is adequate for retrieving these dates.

The Local request that management cease and desists assigning these duties of quality control specialist/clerks to maintenance technicians immediately.

IN-SECTION BIDDING

Articles: 3.12,15.19,LMOU-12,Sec.12

It's the Local's contention that management is in violation of Article 3. In the assignments of workers, the section reassignments have not been properly determined by work floor management which is a violation of Article 12. There is certainly a dispute in the instant matter and CBA certainly does not limit a grievance to interpretation, application, compliance of CBA.

The Local requests that management adhere to all postal policies and procedures, CBA and LMOU pertaining to reassignments, IN-SECTION bidding. Also that the Grievant is assigned his correct rest days and job I.D.

LETTER OF DEMAND

Articles: 15.19.28 Debt Collection Act

Grievant was issued an accountability shortage (Letter of Demand) notice dated, (DATE), for \$2,717.91, which alleged on (DATE) her flexible credit/accountability was counted by Supv. (NAME). Grievant is not responsible for the alleged shortages. Her spare key to cash drawers has been missing since (DATE). For the past four months she never had an audit on time, and also the three years she has been there she never had a key check. She has not been properly audited in accordance with the CBA and/or finance procedures. There is no concrete evidence of wrong doing on the part of the grievant/employee. Grievant followed procedures as was understood. In addition, Grievant has exercised due care and caution in the performance of financial duties.

Local request that the L.O.D. be rescinded and expunged from all records. Grievant is absolved of any liability. Also, that the Grievant is made whole for any and all losses with interests. The Local further request that management adhere to postal regulations and policies regarding audits.

LETTER OF WARNING

Articles: 2,3,10, 15,16,19,30 ELRM-510,LMOU,Local Leave Policy
(if applicable), EL-921, FMLA, PMG Statement on FMLA

On (DATE) at approximately 5:00 p.m. Grievant was issued a Letter of Warning for alleged "AWOL". The charge letter states Grievant on (DATE) failed to report as schedule or to notify the station of inability to report. The Leave program has not been properly administered in that the regulations of the National and Local Agreements have not been met. The AWOL was not properly administered in that it was an automatic action without consideration to the needs of the employee. There is certainly a dispute in the instant matter and the CBA certainly does not limit a grievance to interpretation, application, complaints of CBA. The grievance was filed by the Union within the time limits of when it was first made aware of the facts giving rise to the grievance.

The Letter of Warning is without just cause. This contention is based on, but not limited to, the employer's violations of the CBA, FMLA, and various other regulations. The Grievant was not advised of her FMLA rights.

The Local request that the Letter of Warning be rescinded and expunged from the Grievant's records and that the AWOL charges are deleted and appropriate leave granted. The Local requests that management adhere to the provisions of the FMLA.

OUT OF SCHEDULE PREMIUM

Articles: 8.9.12,15,19.37.LMOU, ELRM

As of (DATE) the requested documents from (NAME) has not been received which verifies the rest days of the Grievant. Grievant was awarded a bid to Special Delivery Unit WPC approximately (DATE) with Sunday/Monday rest days. Supervisor (NAME) instructed her that her rest days were changed to Monday/Tuesday. Manager (NAME) had her sign forms indicating these changes. Grievant, approximately (DATE) bid and later relinquished the bid. Approximately (DATE) the cancellation of jobs pending qualifications # _____ was posted showing the Grievant's rest days as Sunday/Monday (bid #). Management has violated the work week of the Grievant in violation of the CBA and LMOU. Grievant's work week has been altered improperly. Management has not compensated the Grievant for out-of-schedule premium pay when they changed her rest days. Management has not followed criteria of ELRM and is, therefore, in violation.

The Local requests that the Grievant be paid out-of-schedule pay for all periods worked out of her bid assignment, with interest and restore her to her original bid rest days.

PAST PRACTICE/BREAKS

3.5.14.19.30. LMOU-8. Past Practice

The Local is contesting the unilateral refusal to abide by the LMOU which grants past practice (15 minutes) for automation section employees. It has been clearly established over a long period of time (years) which has been known to all parties (employees, management and bargaining agents). Employees in that section have consistently and without change observed two 15 minute rest breaks in accordance with the LMOU hours upon hours for years.

Language in the LMOU by its application and history bears proof that 15 minute breaks for this section has been the accepted past practice. There is no evidence to support a need for a unilateral change or other factors short of the designated period for Local Negotiations. The nature of the assignment is more conducive to a 15 minute break as opposed to a 10 minute one.

The Local request that the Grievant and all employees in his section be granted their 15 minute breaks as per past practice and the LMOU is complying with and is properly enumerated.

REMOVAL/ Violation of Last Chance Agreement

Articles: 2,3,8,9,10,11,15,16,19,30, LMOU, Attendance Policy
(if applicable) EL=921. FMLA. Civil Rights Act

This grievance evolves from the issuance of a Removal charging (Violation of a Last Chance [Firm Choice] Agreement), specifically charging The Usage of Unscheduled Leave which exceeded (16) hours and the charge of AWOL which exceeded (0) hours. The Removal is without just cause, punitive rather than corrective. The Union bases this contention on, but not limited to, the following: The Grievant is afflicted with alcoholism and apparently is making an attempt to secure assistance to arrest the condition through hospitalization and prescribed medication (s). Approximately half of the absences the Grievant is being charged with being for three (3) days or more, which indicates a serious illness, may have existed that may have been protected under FMLA. Grievant's attendance reflects the fact that he may be eligible for FMLA. Management has provided no evidence to the Union that the Grievant was properly notified of his rights under FMLA Act. Grievant appears to fall under the protection of both the FMLA Act and the civil rights act, (Title VII).

The Local request the removal be rescinded, expunged from all records, AWOLs deleted with approved leave inserted. Grievant made whole for all lost wages, benefits, holiday pay, overtime opportunities, and interest. In addition, management adhere to the FMLA.

UNAUTHORIZED DRUG TEST

Articles 2,5,15,19,35,ELRM

On (DATE) at approximately 8:30 p.m. the Grievant was given a 7020 by Supv. (NAME) instructing him to go to the office to see Mr. (Name) and Mr. (NAME). Grievant was informed that if he did not take the urinalysis that he would be put out of the building. Therefore, he followed instructions. He was told as per a Step-2 grievance appeal settlement that he was being tested randomly for illegal drugs. Management violated the Step-2 grievance appeal settlement which states, "The Grievant will be required to submit the random drug tests if reasonable cause is determined by the EAP Office." Management has no concrete evidence that warranted the drug test. Management has taken unilateral action which has impacted terms of the CBA under the definition of the N.L.R.A.

The Local takes the position that there was no demonstrative reason for the drug test and, therefore, was improper search and seizure. Management has no concrete evidence to prove Grievant was actually under the influence of any substance. Grievant was singled-out and shown disparate treatment.

The Local request that the test be disregarded, that management cease and desists the unilateral action of drug testing, that they adhere to any and all settlement agreement. In addition, that the Grievant is not singled-out nor treated disparately.

SAMPLE RESOLUTION LANGUAGE

AWOL...

Articles: 8,9,10,15,19, ELRM 510, LMOU-10, Local Leave Policy (if applicable)

Local request: That the AWOL issued on (DATE) for (# of Hours) be rescinded and approved leave is inserted.

COMP TIME... Denial of Comp Time

Articles: 10,19,ELRM 510, 513, Memorandum for Postal Installations

Local request: That the grievant is approved comp time on a day of her choice (at the employee's option) or be issued eight hours of administrative leave.

Local requests: AWOL's be deleted and LWOP inserted for period # (DATE) thru (DATE).

Local requests: that the (# Hours) AWOL for (DATE) be deleted, Grievant is excused and holiday pay inserted for (DATE).

CLOCK IN... Mgt's refusal to allow employee to clock in

Articles: 2,8,9,10,15,19,ELRM 510, LMOU 10, Local Leave Policy (if applicable)

Local request: That the grievant is paid eight hours for (DATE) and that the notice of non reappointment be rescinded and the grievant is reappointed as a T.E. and made whole for all lost time, wages, and benefits including interests.

CRAFT WORK...SDO performing craft work

Articles: 1,3,19

Local request: That the grievant is compensated for 20 minutes overtime for violation of SDO (NAME) performing bargaining unit work.

DETAIL...Denied detail

Articles: 2,8,13,14,15,ELM 351.2

Local request: That management shows consideration toward the deserving employee and the grievant be granted detail in order to continue medical treatments. Also that management cease and desist from unreasonable and unilateral action toward employees.

FOURTEEN DAY SUSPENSION...Attendance

Articles: 2,8,9,10,15,16,19,ELM 921, LMOU-10, Local Leave Policy (if applicable)

Local Request: That the 14-day suspension is rescinded and expunged from all records. That the grievant is made whole for any and all loss time, wages, and benefits plus interests. Also that the Supervisor is in compliance with the CBA, LMOU and Policies governing leave and attendance.

HOLIDAY...Holiday leave denied

Articles: 2,3,11

Local request: That the grievant is relieved of holiday work and that he or she is afforded an opportunity to take a holiday off in the future as designated by him or her.

HOSTILE...Hostile Behavior/ Intimidation

Articles: 2,3,15,19

Local request: That SDO (NAME) refrains from this type of abusive behavior toward craft employees and that upper management takes appropriate actions in correcting this supervisor.

IN-SECTION BIDDING... Denied IN SECTION bid opportunity

Articles: 3,12,15,19,LMOU 12, Sec.2

Local request: That management adheres to all postal policies and procedures, CBA and LMOU pertaining to reassignment/IN-SECTION bidding. Also, that the grievant is assigned his or her correct rest days and Job I.D. as well as for all records to be corrected as such.

Local request: That Grievant is granted a fair opportunity to resubmit request due to management neglect and that Grievant is paid out-of-schedule premium from effective dates of other reassignments as deemed.

L.O.W.

Articles: 8,9,10,15,16,19,ELRM 510,513,LMOU-10, Local Leave Policy (if applicable)

Local request: That the L.O.W. is rescinded and expunged from the grievant's records and files.

LUNCH... Forced lunch

Articles: 2,3,19,ELM 3,4,510

Local request: That the practice of forced lunch ceases and that the supervisor take appropriate action on leave requested.

OJI...Denied OJI Assignment
Articles: 9.15.19.25

Local request: That Grievant is paid higher level pay equivalent to what was paid to the other employees for Management's error in not assigning the grievant to train the N.T.E.'s.

O/T...Denied Overtime / Harassment ... Passed over for O/T
Articles: That the grievant is compensated (Number of hours) overtime pay for opportunity denied him or her by SDO (NAME) after reporting for overtime on (DATE).

Local request: That the grievant is paid (Number of hours) of pay at the o/t rate for being improperly passed over (DATE) and that the SDO abides by the O/T provisions of the contract.

REPRESENTATION... Denied Representation
Articles: 15.17.19

Local request: That when a shop steward is requested by the Grievant, that the supervisor call the shop steward within a reasonable time.

REST DAY...Rest day disapproval
Articles: 15.19.ELRM 510. LMOU 10. Local Leave Policy (if applicable)

Local request: That the Grievant's AWOL is deleted. It is understood that no leave is involved on a rest day.

RSL..Restricted Sick Leave
Articles: 3.10.15.19,LMOU-10.ELM510.Local Leave Policy

Local Request: That the grievant's name is taken off restricted sick leave and that the supervisor abides by the Leave Policy and ELM Provisions.

REMOVAL
Articles: 2.3.8.9.10.11.15.16.19.EL-921.Local Leave Policy

Local Request: That the Removal issued to Grievant (DATE) is rescinded and expunged from the Grievant's records and the Grievant made whole for all lost time, wages, and benefits including interests.

SUSPENSION
Articles: 2,3,8,9,10,11,15,16,19, EL-921, Local Leave Policy (if applicable) FMLA

Local Request: That the Suspension is canceled, the notice is rescinded and expunged from the records and grievant made whole for any and all lost time and wages incurred, including interest.

UNILATERAL ACTION... Change/ Prohibition of Unilateral Action

Articles: 1.3.4.5.19.37. R.I. 399, Past Practice

Local Request: That management abides by the CBA, past practice of notifying the Local of any changes which will affect the wages, hours and working conditions of the employees and that no implementations of changes are implemented until the Local affected has been properly notified and negotiations have taken place between the parties. The Local further requests that management notify the Local of their intended plan which will affect the Clerks and their positions in the Grievant's section at the (Facility/Unit), the impact to the employees affected and management's intentions in abolishing or excessing positions in the Clerk Craft.

Local Request: That the positions of the grievants are awarded to the clerk craft and not to mail-handlers.

Local Request: That the grievants' job in (Facility/Unit) or Section, be protected and not abolished or excessed and the grievants are given training on the (Operation).



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

NOV 13 1986

ARTICLE	17
SECTION	
SUBJECT	INFO. REQ.
SUP. MTT. RECORD	

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Greensboro BMC, NC 27495
H4T-3P-C 10526

Dear Mr. Connors:

On October 15, 1986, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated the National Agreement by denying the union's request for supervisor's 3972's.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. We further agreed that no national interpretative issue is fairly presented in the particulars evidenced in this case. We further agreed that if the local union can substantiate that the subject information is relevant to establish desperate treatment, the information requested will be granted. However, this can only be determined after full development of the fact circumstances involved in this case. Therefore, this case is suitable for regional determination.

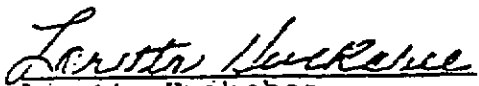
Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration, if necessary.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Mr. James Connors

Time limits were extended by mutual consent.

Sincerely,



Loretta Huckabee
Labor Relations Department



James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Entant Plaza, SW
Washington, DC 20260

October 24, 1983

ARTICLE	17
SECTION	INFO.
SUBJECT	Request
SUPERVISOR	
DISCIPLINE	
RECORD	

Mr. Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

Re: Class Action
Athens, GA 30601
E1C-3D-C 24168

Dear Mr. Wilson:

On October 4, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether management violated Article 17 of the National Agreement by denying a union steward's request for a copy of a letter of warning issued to a supervisor.

73

During our discussion, we agreed that, as provided in Article 17.3, the steward, chief steward, or other union representative may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists. We agreed that under certain unique circumstances, a letter of warning issued to a supervisor or another employee could become a necessary document.

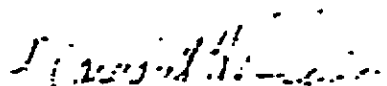
We further agreed that the question of whether the letter of warning in this case is a necessary document, as described above, is not a matter that requires national level interpretation by rather application of Article 17.3 to the fact circumstances.

Accordingly, as agreed, this case is hereby remanded to the parties at Step 3 for further processing and arbitration, if necessary,

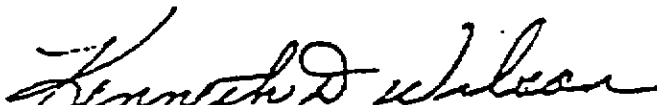
~~Kenneth D. Wilson~~

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

Sincerely,



Margaret H. Oliver
Labor Relations Department



Kenneth D. Wilson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

February 4, 1983

ARTICLE	17
SECTION	
SUBJECT	
INTERVIEW	
Non Postal	

Mr. Balline Overby
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

Re: M. Bottorff
Miami, FL 33152
H1N-3W-C 11184

Dear Mr. Overby:

On December 20, 1982, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed to resolve this grievance with the following memorandum of understanding negotiated at the national level.

The parties agree to recognize the following as nationally-established policy regarding a steward's request to leave the work area while on-the-clock to interview a non-postal witness:

In accordance with Article 17 of the 1981 National Agreement, a steward's request to leave his/her work area to investigate a grievance, shall not be unreasonable denied. Subsequent to determining that a non-postal witness possesses relevant information and/or knowledge directly related to the instant dispute under investigation, a steward may be allowed a reasonable amount of time on-the-clock, to interview such witness, even if the interview is conducted away from the postal facility. However, each request to interview witnesses off postal premises must be reasonable and viewed on a case-by-case basis. For example, it is not unreasonable for a supervisor and/or steward to telephone the

Mr. Halline Overby


2

prospective witness to ascertain availability and willingness to be interviewed and, if willing, to establish a convenient time and locale.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to resolve this case.

The time limits were extended by mutual consent.

Sincerely,


Robert L. Eugene
Labor Relations Department
Halline Overby
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO



RECEIVED

UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

JUN 16 1988

APWU
CLERK DIVISION

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUN 14 1988

ARTICLE	17
SECTION	
SUBJECT	
LAST	
INFORMATION	

Re: Class Action
Manchester, NH 03103
H4C-1K-C 41761

Dear Mr. Connors:

On February 10, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management properly denied the union's request for information under the provisions of the National Agreement.

77

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. This is a local dispute suitable for regional determination by application of Articles 17 and 31 of the National Agreement. The union agreed that they will be required to reimburse the USPS for any costs reasonably incurred in gathering requested information, in accordance with the schedule of fees outlined in Section 352.6 of the Administrative Support Manual. Management should provide the union an estimate and may require payment in advance. With this in mind, requests for information should not be denied solely due to compliance being burdensome and/or time consuming.

Accordingly, we agreed to remand this case to the parties at Step 3 for further processing, including arbitration if necessary.

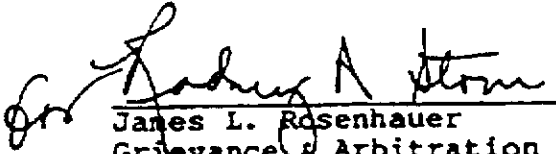
Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case.

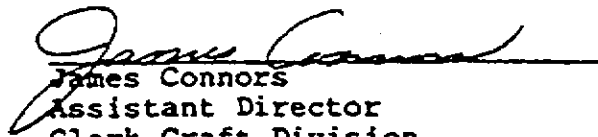
Mr. James Connors

2

Time limits were extended by mutual consent.

Sincerely,


James L. Rosenhauer
Grievance & Arbitration
Division


James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20000

December 18, 1981

ARTICLE	<u>17</u>
SECTION	
SUBJECT	<u>INFO. REQUEST</u>
	<u>TIMELY FURNISHING</u>

Mr. Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union, APL-CIO
817 - 14th Street, NW
Washington, DC 20005

Re: A85-2720
Class Action.
Key West, FL 33040
H8C-3W-C-35511

Dear Mr. Wilson:

On November 30, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

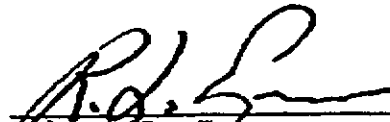
We mutually agreed that there was no interpretive dispute between the parties at the National level as to the meaning and intent of Article XXXI or Article XVII of the National Agreement as they relate to a union steward's request for copies of, or access to documents, files and other records necessary for processing a grievance or determining if a grievance exists.


The parties agree that there shall be no "game playing" with regard to the above. If the Union requests copies of information as per Article XXXI, they may be required to pay just costs reasonably incurred in obtaining the information and the information shall be furnished in a timely manner. When a steward requests to review information as per Article XVII, such a request shall not be unreasonably denied and it shall be furnished in a timely manner.

The information requested by the steward in this grievance by letter dated July 11, 1981, shall be furnished, notwithstanding the dispute between the parties concerning the information requested earlier in a letter dated March 25, 1981.

Please sign the attached copy of this case as your
acknowledgment of agreeemnt to resolve this grievance.

Sincerely,


Robert L. Eugene
Labor Relations Department


Kenneth D. Wilson
Administrative Aide, Clerk Craft
American Postal Workers Union,
AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

JUL 27 1988

ARTICLE 17

*Information Request
Discussion Notes*

Re: Local
Inglewood, CA 90311
B4C-5C-C 45726

Dear Mr. Connors:

On March 22, 1988, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management was proper in denying the union's request for copies of a supervisor's personal notes which were taken during a discussion.


During our discussion, we mutually agreed that when requested, the union will be given the date and subject of a discussion, providing that such discussion was relied upon by the supervisor in a disciplinary action to establish that the employee had been made aware of his/her obligations and responsibilities.

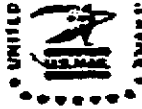
Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,


Joyce Ong
Labor Relations Department


James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO



EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20209

NOV 22 1978

ARTICLE	17
SECTION	
SUBJECT	
RELEASE	
ALTERNATE TIME	

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

Re: C. Nelson
St. Louis, MO
NC-C-16045/By-Pass

Dear Mr. Riley:

On November 9, 1978, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

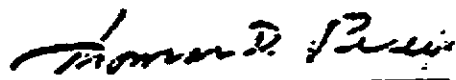
The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

During our Step 4 meeting, we mutually agreed to consider this grievance resolved based on the following: If management must delay a steward from investigating or continuing to investigate a grievance, management should inform the steward involved of the reasons for the delay and should also inform the steward of when time should be available. Likewise, the steward has an obligation to request additional time and to state reasons why this additional time is needed. Requests for additional time to process grievances should be dealt with on an individual basis and not be unreasonably denied.

Please sign the attached copy of this letter as your acknowledgment of the agreed to settlement.

Sincerely,

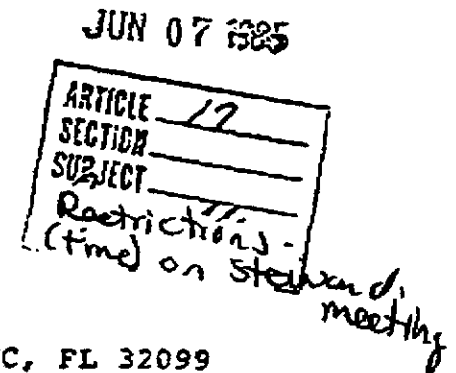

Daniel A. Kahn
Labor Relations Department


Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399



Re: Class Action
Jacksonville BMC, FL 32099
H1C-3W-C 44345

Dear Mr. Connors:

On May 9, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether management violated Article 17 by allowing the union steward to meet with affected grievants for a specified amount of time only.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:


Employees should be permitted, under normal circumstances, to have a reasonable amount of time to consult with their steward. Reasonable time cannot be measured by a predetermined factor.


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Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,


Leslie Bayliss
Labor Relations Department


James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO



EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20396

November 18, 1974

Mr. Tony R. Huerta
Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, NW
Washington, DC 20001

ARTICLE	17
SECTION	
SUBJECT	
INFORMATION REQUEST	
CUSTOMER COMPLAINT	

R4

NB-C-1930(N-37)/3-DET-419

Dear Mr. Huerta:

On September 4, 1974, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

In this case an employee was disciplined as a result of a customer complaint. The union grieved the discipline action and requested the name and address of the complaining customer. Local officials refused to divulge the requested information contending that there were previous instances where the union had harassed complaining customers.

It is our decision, in this instance, that the union has a right to the requested information. Accordingly, the grievance is sustained. We would like to note however that union officials will be held accountable for their conduct towards US Postal Service customers.

Sincerely,

William J. Downes
Labor Relations Department

84



M 0045

EMPLOYEE AND LABOR RELATIONS GROUP
Washington, DC 20268

NOV 10 1977

ARTICLE	17
SECTION	
SUBJECT	
INTERVIEW	
SUPERVISOR/WITNESS	

Mr. Thomas D. Riley
Assistant Secretary-Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N. W.
Washington, D. C. 20001

Re: Branch 1477
St. Petersburg, FL
NC-S-8463/W5-FL-13148

Dear Mr. Riley:

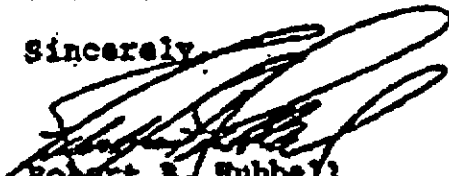
On October 25, 1977, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

The delivery of disciplinary notices to employees as cited in this grievance file is not per se bargaining unit work. This aspect of the grievance is denied.

Article XVII, Section 3 of the National Agreement states that interviews with aggrieved employees, supervisors and witnesses shall not be unreasonably denied. It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance. In this instance the specific nature of the questions and/or reasons for the response or lack thereof is not known.

Sincerely,


Robert S. Hubbard
Labor Relations Department

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UNITED STATES POSTAL SERVICE
Labor Relations Department
475 L'Enfant Plaza, SW
Washington, DC 20260-4100

ARTICLE	17
SECTION	
SUBJECT	
INFORMATION REQUEST	
MEDICAL RECORDS	

Mr. Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001-2197

NOV 16 1988

Re: Marxen
Fort Lee, NJ 07024
B7N-1P-C 2187

Dear Mr. Hutchins:

On November 2, 1988, a meeting was held with the NALC Director of City Delivery, Brian Farris, to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

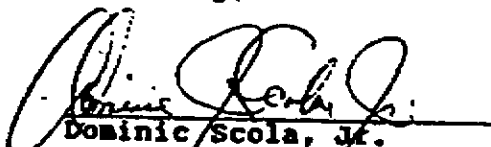
The issue in this grievance is whether an employee's medical records must be released to the union when they are requested during the investigation of a grievance.


During our discussion, we mutually agreed that the release of medical records to the Union is provided for in the Administrative Support Manual, Appendix (p. 42) (USPS 120.090). Accordingly, this grievance is sustained and the records in dispute will be provided to the union.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to close this case.

Time limits were extended by mutual consent.

Sincerely,


Dominic Scola, Jr.
Grievance & Arbitration
Division


Lawrence G. Hutchins
Vice President
National Association of
Letter Carriers, AFL-CIO

REGIONAL ARBITRATION AWARDS

CASE NUMBER: C7C-4B-D 66344

C7C-4B-D 66348

ARBITRATOR: Ruth E. KahnALTERCATION (Verbal):

Page 8- "With respect to the verbal behavior, the use of the words 'continued'... agitation requires some discussions. "Agitation" may mean to stir up or to set in motion. If that is the meaning of the Postal Service charge, it is entirely misplaced as to Nance, for she was the object of Lyons' continued agitation and not the source. "Agitation" may mean, as well, that the person has been stirred up, and in this case, clearly Nancy had been 'stirred up' by causes for which she had no responsibility. The charge of 'continued...agitation' is dismissed.

Page 9- Several factors require mitigation of the penalty assessed against Nance. The most compelling are the actions -- or lack thereof-- by the supervisor. First, Wells learned early on from Nancy that Lyons was being difficult. She goes on to say, "Wells went to Lyon's work area, but said nothing to admonish Lyons about her conduct. She simply took the stock from Lyons and gave it to Nance, telling her to count. She certainly, at that point, had an obligation to deal with Lyons and advise her that her conduct was unacceptable. That might well have checked the entire situation.

88

Page 10- In view of these facts, together with the absolutely improper conduct of Lyons in instigating the entire confrontation, I believe the penalty imposed on Nance is too harsh.

CASE NUMBER: COC-4P-I 99057

AIRS #20748

ARBITRATOR: Harvey A. Nathan

BURDEN OF PROOF:

In this case the Union argued that an unreasonable burden does not mean a 'mere difficulty' or 'complication.' This argument was accepted by the arbitrator. He said that in order to change an item of an LMOU, "[the Service must show that the challenged LMOU provision constitutes an immoderate or exorbitant imposition, which reason cannot justify or excuse.

CASE NUMBER: SOC-3U-1 900079

ARBITRATOR: Michael Jay Jedel

BURDEN OF PROOF:

The Arbitrator stressed that the burden of proof 'lies with the Postal Service, under the clear new language of the National Agreement.' He went on to say that '[n]either the Union, nor the Arbitrator in this interest

arbitration, must establish that the existing provision is 'reasonable'... rather the union may simply argue it is not an 'unreasonable burden,' if the Employer has made at least some plausible arguments supportive of that assertion

CASE NUMBER: SOC-3D-1 900049
ARBITRATOR: I. B. Helburn

BURDEN OF PROOF:

The Arbitrator found that testimony of Postal Service Witnesses, which failed to document specific problems with other than same day leave requests was 'too general and speculative to meet the burden of proof.'

CASE NUMBER: SOC-3B-1 900015
ARBITRATOR: William K. Harvey

BURDEN OF PROOF:

The Arbitrator ruled that the Agency failed to prove that provision constituted direct cause of inefficient operations or increased costs.

In this case he ruled that the Service failed to prove the existence of an unreasonable burden due to leave provisions which did not count employees on union activities, on military leave, on jury duty, or attending state or national conventions as part of the number to be allowed annual leave on choice vacation periods and which did not permit management to count known or scheduled sick leave, LWOP or COP covering an entire day or week, vacancies created by retirement or terminations against allowable leave during the choice vacation period. The Service relied solely on evidence that there was a problem of delayed mail at the facility. The arbitrator held that there was 'no showing that the annual leave provisions in issue have caused or even been a major contributing factor to the delay in mail...'

CASE NUMBER: SOC-3N-1 900063
ARBITRATOR: Fallon W. Bentz

BURDEN OF PROOF:

He said that 'evidence of one isolated period of plan failures during a one week period in March 1991' was just not enough evidence to support the unreasonable burden standard of proof which the National Agreement specifies.

On Page 12- he states that while the Postal Service's concern over utilization of overtime is highly commendable, standing alone the overtime is insufficient to establish an unreasonable burden. There was no evidence of plan failures on the 3 days in question. There was no evidence of the impact of the LMOU provisions on the Postal Service's operations in years prior to 1991. The Postal Service has not met its required standard of proof.

ARBITRATOR: Mark L. Kahn

BURDEN OF PROOF:

Grievant did not commit misconduct on February 4, 1994, and Just Cause did not exist for either his Emergency Suspension or for his Removal.

Page 11- It is utterly reasonable that the Postal Service deems a "physical altercation on Postal Service Property to be a Removal Offense (as stated in the DSM notice of 11-28-90)." Prior arbitration decisions support the principal that an employee who physically assaults and injures another employee on the job is subject to discharge. Horseplay, on the other hand, is explicitly subject to corrective disciplinary action.

What the Arbitrator must initially determine, of course, are the facts relating to the "altercation" between the grievant and mailhandler Walter on February 4, 1994.

Page 13- he states, "I credit grievant's testimony that Walter had previously called grievant a "queer", had hit grievant's head with a plastic beer cooler, had thrown grievant's hat on top of a truck, had previously grabbed Registry pouches away from grievant, and more...

Page 15- "I find that Just Cause did not exist for grievant's Emergency Suspension on February 4, 1994 (confirmed in writing on February 7, 1994) because (a) there was no basis in grievant's case to conclude that he may be injurious to self or others and (b) because Emergency Suspension was imposed solely by Corin without the consequences of the installation head or designee. I also find that Just Cause did not exist for grievant's removal because, as I have determined, grievant did not punch or otherwise administer 'physical blows' to Walter. In fact, given the circumstances, grievant responded to Walter's provocative horseplay with commendable restraint.

Both grievances should be and are Sustained.

CASE NUMBER: WDC-SE-D 2926

ARBITRATOR: Claude D. Ames

COMPLETE AND FAIR CONSIDERATION:

Page 17- "After careful examination of the evidence record, the Arbitrator must conclude that the grievant does not pose a potential risk of physical harm or threat to his fellow employees. Further, that the grievant's conduct consisted of a single, thoughtless blow proximately caused by his frustration and the tension arising from his inability to get assistance for the backlog of mail. Frustration and tensions were abound on the workroom floor. Two employees, who by all accounts previously worked well together and respected each other, suddenly became involved in a heated exchange. Placed in this stressful situation, where the credibility of both grievant and Art Fareas were being questioned, it was readily foreseeable that some physical altercation would occur.

Page 19- Arbitrators are likely to reduce a Removal Action to a lesser penalty where mitigating factors are present.

CASE #F90C-4F-D96022402
F90C-4F-D96022401
Arbitrator Robert R. Bergeson

Circumstantial Evidence:

On page # 9: "Even had management proved that the grievant engaged in misappropriation of funds, the entire case in that regard was based on circumstantial evidence (i.e., the grievant was never "caught red-handed"). Also, the investigation was flawed....

CASE # W7C-5D-D 15848
ARBITRATOR CARLTON J. SNOW

CIRCUMSTANTIAL EVIDENCE:

PAGES 16-17: "...Evidence received by the Arbitrator would not support a charge of misappropriation of funds. There was not enough direct or circumstantial evidence to support a conclusion that the grievant intentionally was misappropriating postal funds or acted dishonestly. Employer charged grievant without just cause.

CASE # E4C-2A-D-51007
E7C-2A-D-2516
ARBITRATOR ROBERT F. CONDON

CLEAR AND CONVINCING EVIDENCE:

PAGE 14: The Postal Service failed to establish by clear and convincing evidence that the suspension and removal of the grievant were for just cause.

Case Number: S1M-3U-D17676
Arbitrator: Howard Myers

Corrective Discipline:

Page 12- He states, "There is no showing of deliberate comments or acts of intentional physical contact relative to "an intimate sexual nature." ... "Under Article 16 corrective discipline was not followed." Reinstatement to the position of carrier will be awarded with reimbursement for lost earnings, but with deduction for earnings at any jobs for the period from the date of removal to the date of reinstatement.

CASE # E90C-4E-D96006429
Arbitrator Bennett S. Aisenberg

Due Process:

He states on page 9, "This Arbitrator's review of the reported cases on industrial due process on industrial due process reveals there is no hard and fast rule subject to uniform application. See R. Fleming, The Labor Arbitration Process, (University of Illinois Press 196) pgs. 134-164. Each case must stand on its own facts.

However, arbitrators have reversed management's actions in discharging or taking other disciplinary action against employees where fundamental fairness has not been afforded to the discipline employee. He goes on to say, "Due process requires a consideration of a number of factors including;

1. The nature of the incident'
2. The nature of the charges;
3. The existence or lack thereof of mitigating or explanatory facts;
4. The necessity for a full investigation, including the opportunity for the employee to tell his side of the story, and;
5. The likelihood that management might have acted differently had it conducted a full investigation.

He further states on page 10, "The Service has emphasized the importance of a thorough investigation in promulgating the Supervisor's Guide to Handling Grievances, Handbook EL-921 wherein the following language is set out.

Was a thorough investigation completed?

Before administering the discipline, management must make an investigation to determine whether the employee committed the offense. Management must ensure that its investigation is thorough and objective.

This is the employee's day in court privilege. Employee have the right to know with reasonable detail what the charges are and to be given a reasonable opportunity to defend themselves *before* the discipline is initiated.

The Service has recognized the importance of permitting an employee to tell her side of the story before discipline is imposed. Had this been afforded the grievant in this case, it is reasonable to assume that Kerby and the reviewing official might not have issued the Notice of Removal."

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The Removal was not for Just Cause. Grievant was returned to duty.

CASE # W7C-5D-D 15848
ARBITRATOR CARLTON J. SNOW

DUE PROCESS:

PAGE 16:He states, "...Section 5 of Article 16 in the parties National Agreement requires that an employee be made aware of charges pending against him or her. If management actually removed an employee for theft, proof of that belief ought to be forthcoming.

DUE PROCESS:

PAGE 16:"... Section 5 of Article 16 in the parties National Agreement requires that an employee be made aware of charges pending against him or her. If management actually removed an employee for theft, proof of that belief ought to be forthcoming...."

CASE NUMBER: N7C-1F-C 29180
ARBITRATOR: Nicholas H. Zumas

EMERGENCY NON-PAY STATUS:

Page 4- "After review of the record, it is this Arbitrator's finding that the Action taken by the Service was fatally flawed and the grievance must be Sustained.

Page 5- "The Action taken by the Service was pursuant to that portion of Section 7 allowing an employee to be placed in emergency non-pay status where such employee "may be injuries to self or others.

FMLA:

Arbitrator William Eaton Award Decision of the U. S. Postal Service and the American Postal Workers Union, Sacramento, Ca., Case # F90C-1F-D9501-9463:

Page #9 (3rd Paragraph) "As to the FMLA Claim, it would appear that the Postal Service was not fully aware of its obligations when an FMLA qualified incapacity or illness is reported by an employee. The Grievant did report depression during the latter part of September and early October, which may well have qualified for FMLA leave."

(Is Grievance Arbitrable)

Arbitrator Patricia S. Plant Award Decision of the U. S. Postal Service and The American Postal Workers Union, Tampa, FL, Case # H90C-1H-D-95036450:

Page #6 "This Arbitrator believes that she must be guided by what she construes to be the intent of the parties with regard to FMLA. That intent is determined by an examination of the language, nature and object with regard to the Parties and FMLA."

She goes on to say on lines 6-8, "The issue is declared within the arbitrator's jurisdiction. The Parties are requested to prepare themselves for a hearing on the merits of the case to include the question as to whether or not the grievant's absence of September 29 and 30, were covered under FMLA.

Arbitrator Thomas H. Vitaich Award Decision of the U. S. Postal Service and the American Postal Workers Union, Palmdale, Ca., Case #F90C-4F-D95055676:

Page #4- Conclusion: ..."The failure of the Postal Service to comply with the terms of the FMLA and its own Postal Bulletin requires that I sustain the grievance in part. The Act does not allow punishment for taking advantage of its rules and regulations"....

CASE # F90C-4F-D95049367
Arbitrator Robert R. Bergeson

Fundamental Procedural Rights:

The Arbitrator states on page 10, "A fundamental component of Just Cause principle is that employees be notified, prior to the imposition of discipline and with reasonable clarity, of the offense (s) which they are

suspected to have committed and given an opportunity to present their side of the story. As discussed by Arbitrator Marlatt in case no SOC-3C-D352, provided by the Union, this principle is of particular importance in discharge cases."

He goes on to say on page 11, "...Thus it is found that the only procedural error committed in the course of removing the grievant was the absence of any notification of the charges against her prior to issuance of the notice of removal. The question thus becomes what remedy is appropriate." The grievant was reinstated.

CASE NUMBER: Impasse Arbitration Grievance, Springfield, Massachusetts, 9/14/88
ARBITRATOR: Nicholas H. Zumas

INCONSISTENT & INCONFLICT:

On Page-9 he ruled that with respect to the argument by the Service that Article 3 of the National Agreement vests in it the exclusive right to conduct its operations as it sees fit, is without merit. He reference to Arbitrator Mittenthal in Case No. NIC-NA-C 59/61:

As for Article 3, the Postal Service asserts that it provides Management with the 'exclusive right' to 'maintain the efficiency of the operations entrusted to it.' It believes the LMU clauses undermine efficiency by requiring Management to grant certain leave requests which, from the standpoint of scheduling, overtime costs or productivity, might better be denied. This argument is not convincing. Article 3 rights are not absolute. They are 'subject to the provisions of this [National] Agreement ...'; they are subject to the terms of Article 10, Section 3 and 4 and Article 30 B 4. The latter provision contemplate that local parties negotiate LMU clauses regarding the 'formulation of [a] local leave program.' When the local parties do what they are expressly authorized to do, the resultant LMU clauses can hardly be said to be 'Inconsistent or in conflict with ... "Article 3."

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(Joint Statement On Violence)

Arbitrator Carlton J. Snow Award Decision of the U. S. Postal Service and the American Postal Workers Union, Torrance, Ca., Case #Q90N-4F-C 94024977/ 94024038:

Arbitrator Snow disagree with the Postal Service. He ruled that the Joint Statement on Violence and Behavior in the Workplace is a contractually enforceable agreement between the NALC and the USPS.

Page ii- (Award Decision) He concluded: ..."Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Joint Statement on Violence and Behavior in the Workplace constitutes a contractually enforceable agreement between the parties. Accordingly, the Union shall have access to the negotiated grievance procedure set forth in the parties' collective bargaining agreement to resolve disputes arising under the Joint Statement. It is so ordered and awarded."

CASE NUMBER: H4N-3U-C 58637
H4N-3A-C 59518
ARBITRATOR: Richard Mittenthal

JUST CAUSE TEST:

Page 9- he states, "My response to this disagreement depends, in large part, upon how the Section 7 "emergency" action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a "Just Cause" test. To quote from Section 1, "No employee may be disciplined ... except for Just Cause. If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the "Just Cause" standards is not applicable. Management then need only show "Reasonable Cause" (or reasonable belief"), a test which is easier to satisfy.

CASE #NOC-1N-D 7492
ARBITRATOR HERBERT L. MARX, JR.

PAGE 10: Cogen submitted the check received for jury duty service promptly. It is not unreasonable that an employee would anticipate that the Postal Service would not provide "make up" pay for days other than those covered by the court payment....However, this is clearly not the first time that adjustments have been required for employees as to proper Jury duty compensation, and the Postal Service has failed to establish that a penalty as severe as removal is warranted in this instance. The Removal was not for Just Cause.

CASE NUMBER: EOC-2K-D 8744
ARBITRATOR: Susan Berk

JUST CAUSE:

Page 22- She states, "Under the principles of Just Cause, an employee must receive notice that the alleged misconduct can result in discipline. The employer must also establish that the rule it seeks to enforce is reasonable; that a fair and proper investigation was conducted prior to discipline, that the employee engaged in the conduct for which he/she was charged, that the employee did not receive disparate treatment, and that the discipline is fair and corrective in nature"....

Page 25- "The harassment must be pervasive to alter the conditions of the victim's employment and create an abusive work environment"....

CASE NUMBER: D90C-1D-D 94052097
ARBITRATOR: Bernard Cushman, Esq.

JUST CAUSE:

Page 18- ..."Under these circumstances a reprimand and a further order to comply with the instructions would perhaps have been appropriate but not removal.

There was not just cause for removal and the Grievant must be reinstated.

CASE NUMBER: F90C-1F-D94016434

ARBITRATOR: John H. Abernathy

JUST CAUSE:

PAGE -2: ... "When the Postal Service decided to drop the AWOL charge against the grievant, it was faced with the problem of how to justify a removal for a proven charge of failure to follow instructions. I note that the removal letter does not cite any prior discipline. So the question now is whether failure to follow instructions, standing alone, justify removal? I find that it does not. While failure to follow instructions is a form of insubordination, it is less serious level of insubordination than failure to obey a direct order. The normal penalty for failure to follow a direct order is removal. The normal penalty for failure to follow instructions is one less than removal.

CASE NUMBER: N90V1T-D92034906 BR9204

ARBITRATOR: Harry R. Gudenberg

JUST CAUSE:

PAGE 7: This case arose out of errors, omissions and confusion. Such occurrences, when they happen, are unfortunate because they force additional stress on all parties. Better sharing of information and internal communications would have avoided the errors and confusion that must now be resolved.

PAGE 8: This entire situation was not helped by the confusion of the grievant's correct address. Nor was her apparent failure to communicate to her supervisor in addition to the medical doctor justified. In fact the confusion about her communications and when made to which parties were a major contributor to the resulting actions.

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PAGE 9: While these failings must be noted, they do not justify or excuse the action taken by the Service.

PAGE 10: The Service's actions were not for just cause, for the reasons stated in the full decision.

CASE NUMBER: WOC-5N-D-119

ARBITRATOR: Gary Raef

JUST CAUSE:

PAGE 12- In order to clearly show the grievant AWOL, Management must come forward with more than mere suppositions of the grievant's assumed knowledge. The Employer must clearly demonstrate actual knowledge by the grievant. In the absence of Management's failure to state clearly in writing on the grievant's 2971 form that his leave was disapproved in part, the evidence presented is too speculative to sustain a seven (7) day suspension.

Therefore, the Arbitrator finds that Management did not follow proper procedures in denying the annual leave request which resulted in grievant believing his request was granted. There is insufficient evidence to sustain a seven (7) day suspension charging grievant with being Absent Without Official Leave. Accordingly, grievant is made whole, with all back pay and for benefits lost during the suspension period.

CASE # C90T-1C-D 95034191
Arbitrator Jacquelin F. Drucker, Esq.

Just Cause:

On page # 23 of 29, she states, "The Union attacks the procedural sufficiency of the USPS's case largely on the grounds that no pre-disciplinary interview was conducted. The necessity for a pre-disciplinary interview was cited by Arbitrator Marlatt in USPS and APWU, Grievant Calloway, Case No SOC-3C-D 3752, Local #C-M91-45-D (Marlatt, 1992) wherein he stated as follow: In an unbroken line of Postal arbitration cases going back to 1979, the arbitrators have made it clear, at least in removal actions, that a predisciplinary interview must be conducted by the supervisor who makes the decision to issue the disciplinary action.

She goes on to say on page 24 of 29, and 25 of 29, "First, the issuance of the Notice of Proposed Removal is the grievable event under Article 15 of the National Agreement. (See Memorandum of Understanding Between the United States Postal Service and the American Postal Workers Union, dated July 31, 1991, and August 12, 1991.)Second, as emphasized by the USPS, the actual decision to seek removal is made by the supervisor. The supervisor is the deciding officer, whose judgment, although subject to review, is central to the employee's future. It therefore, is this person who must hear from the employee regarding discipline for before a determination is made. Thus, this opportunity to reply to the Notice of Proposed Removal (NOPR) did not present grievant with the chance for a pre-disciplinary interview as contemplated by the principles of just cause and due process.A meaningful pre-disciplinary interview involves more than simply asking the employee what happened. The employee needs to know that discipline, especially removal, is being contemplated and be permitted to respond to the possibility that such discipline may result. The employee needs to know this so that he not only may provide information and a defense but also so that he may cite relevant mitigating factors and may seek union advice and representation. The record does not establish to the arbitrator's satisfaction that Grievant was made aware that discharge or any form of serious discipline was being contemplated." The grievance was sustained.

CASE #F90V-1F-D95059601
Arbitrator Morris E. Davis

Just Cause:

He states on page 12, "The agency bears the burden of persuasion to prove that Grievant was removed for just cause. Here, the "just cause" standard requires proof that the charges are accurate and there is sufficient proof of misconduct; that there was reasonable notice of disciplinary action, including removal, for violation of specific work rules or regulations; that a fair and objective investigation was conducted prior to the imposition of discipline; that consideration was given to any relevant mitigating circumstances; and that the penalty of removal was both reasonable and applied in a non-disparate manner. Moreover, in order for discipline to be effective, its purpose should be corrective and not punitive." He goes further to state on page 16, "The failure to conduct a fair and objective investigation has a direct bearing on the issue of just cause. That is, the Agency neglected to conduct a proper investigation of the incident and Grievant's allegations, which could have influenced its decision on just cause for removal. Therefore, the removal action is unreasonable." The grievance was sustained.

Arbitrator Bennett S. Aisenberg
CASE # E90C-4E-D96006429

JUST CAUSE:

Page 10- He states, "The Service has recognized the importance of permitting an employee to tell her side of the story before discipline is imposed. Had this been afforded the grievant in this case, it is reasonable to assume that Kerby and the reviewing official might not have issued the Notice of Removal.

He goes on to say on Page 12, "Taking all these things into consideration, it is the Arbitrator's decision that the dismissal of the grievant was not for just cause.

Arbitrator Christopher E. Miles
CASE #C-90C-1C-C 94010049
C-90C-1C-D 94009984

JUST CAUSE:

Page 27- He states, "Nevertheless, by failing to report for any Fitness For Duty Exam until July, 1994 the grievant merely prolonged the situation. Therefore, the grievance will be sustained in part.

Arbitrator John W. McConnell
CASE NO: N7V-1W-D 9816

JUST CAUSE:

Pages 7-8: He states, "...Mr. Horton's failure to appear for a fitness for duty examination on Monday, Feb. 1, is one of the two charges made by the Postal Service. There is no hard evidence as to why Mr. Horton did not appear as directed by Mr. Koops, the Compensation Officer.

He further states, "Nevertheless, the existence of such a conflict would explain some of the inconsistency in the facts of this case. Horton wanted something. His supervisors refused it. Horton was determined to get his way. The supervisors were determined to prevent it. The result appears to be a chain of stupid actions leading up to very serious charges for which there is no Just Cause. What he did justifies severe discipline, but there was not Just Cause for Removal.

CASE NUMBER: E7C-2P-D 22352/22353
ARBITRATOR: Nicholas H. Zumas

JUST CAUSE:

Page 12- The fight was provoked by Ms. Valentine and the Grievant reacted in self-defense. There simply is no evidence of willful misconduct or intent to injure herself or another employee since the fight was provoked by Ms. Valentine. Based on all of the foregoing, it is found that the Postal Service lacked Just Cause to remove the

Grievant on any of the charges levied. It is also found that while the Grievant did not provoke the physical altercation with Ms. Valentine, she did cause bodily harm to Ms. Valentine and that such force was excessive. The Removal is reduced to a fifteen day suspension and she is to be made whole for all additional lost wages and benefits.

CASE NUMBER: E90V-1E-D96006670

ARBITRATOR: Vern E. Hauck, Ph.D.

PREPONDERANCE OF EVIDENCE:

Page 9- 10 He states that, "...The Union supports its claims with a preponderance of the evidence and the Arbitrator must rule in the Union's favor... Unless there are mitigating circumstances, Arbitrators generally agree that management has the right to invoke disciplinary penalties, including discharge, in instance of threats of violence. In this case, the Arbitrator finds that Stein's termination should be mitigated by the known hostile environment faced by the grievant and his co-employees at their place of work; "Most Arbitrators believe that management may terminate employees for threatening a specific co-worker with violence when the statement is unprovoked and causes or is intended to cause a disruption to production or the peaceful atmosphere of the workplace. To be exact, the record shows that disruption to production and workplace was deminimus....

CASE # W4C-5F-D 35845

ARBITRATOR EDWIN R. RENDER

PREPONDERANCE OF EVIDENCE:

PAGE 13: The service did not prove misrepresentation as the Arbitrator understands it, or misappropriation of funds as the Arbitrator understands it, therefore, the discharge could not stand.

CASE # C4C-4B-D 37415

C4C-4B-D 37416

ARBITRATOR ROBERT W. MCALLISTER

PROCEDURAL DEFECT:

PAGE 13: From the record, it is evident to the Arbitrator that Management did not evaluate a number of factors before removing the Grievant. There is no evidence it weighed the truthfulness of his explanation nor does it appear that his work record was evaluated.

CASE #J90C-1J-D 94048041/44

Arbitrator Mark L. Kahn

PROCEDURAL VIOLATION:

He states on page 14, "The arbitration decisions cited by the Union (see footnote 4) provide ample demonstration that a significant denial of a grievant's procedural rights as set forth in the Agreement constitutes a valid and sufficient basis for sustaining the grievance without consideration of the merits. That is the case here: To sum up: Management did not conduct its own investigation of grievant's case but relied solely on the Investigative Memorandum supplied by Postal Inspection; Management undermined the grievance procedure by

(a) failing to provide the Union with a detailed statement of its position and (b) denying a Union request for pertinent documents; and Management deprived grievant of thirty days "on the job or on the clock" upon issuing its Notice of (Proposed) Removal in violation of Article 16, Section 5. This is substantial package of serious procedural violations, for which the Arbitrator is obligated to sustain the grievance without consideration of the merits. The removal was not for Just Cause. Grievant was made whole and reinstated.

(Article 16)

Arbitrator Kenneth M. McCaffree Award Decision of the U. S. Postal Service and the American Postal Workers Union, Lompoc, Ca., Case #W7C-5T-D 8044

Page 15: The statements of the Grievant that "something's going to happen to that man" or "that man's lucky to be alive" are essentially non-personal and non-specific, and logically arose from comments of both Mr. Baker and the Grievant regarding the practices of Mr. Alvarado, that he was inflexible, lived by the letter or the rules and regulations, and was even harsh in his administration of the post office and in his supervisory directions.

Page 23: ..."I decided that the removal of Grievant B. Morrison on or about June 10, 1988, was not for just cause as required by the National Agreement.

CASE NUMBER: WOC-5R-I 90152

ARBITRATOR: John H. Abernathy

UNREASONABLE BURDEN:

Page 13-15- He ruled that the Postal Service must demonstrate that a current provision is an unreasonable burden before determining what alternative language would be appropriate.

He ruled since Article 30 Section F does not define the term "unreasonable burden", and since a definition cannot be determined from reading the National Agreement as a whole, he will assign this term the normal and ordinary meaning, using Webster's New Twentieth Century Dictionary (2nd ed. 1983), which defines "burden" as "1. That which is borne or carried out; a load. 2. That which is borne with labor or difficulty; that which is grievous, wearisome or oppressive." It defines "unreasonable" as "1. Not reasonable or rational; having or showing little sense or judgment. 2. Excessive, immoderate; exorbitant." That in his opinion, "unreasonable burden" is clearly something more than a mere 'burden'. That he agree with arbitrators that a distinction must be made between a "burden" imposed by a particular LMOU provision and an "unreasonable burden".

"Moreover, a statement that a particular provision is an unreasonable burden in the opinion of management is insufficient. As Section 'F' recognizes, the Postal Service has the burden of proof to show that such a provision is an unreasonable burden. In his judgment, the Postal Service must meet this burden of proof by a preponderance of evidence. Only after the Postal Service has demonstrated that the current provision is an unreasonable burden will the question arise as to what alternative language would be appropriate."

CASE NUMBER: NOC-1F-I 90018
ARBITRATOR: George R. Shea, Jr.

UNREASONABLE BURDEN:

According to Arbitrator Shea, the following criteria have to be applied to determine whether the Service met its burden of proving the existence of an unreasonable burden:

- A. Does the provision create a substantial obstacle to, or prevent, the Service's accomplishment of its business purpose;
- B. Does the provision have an inordinate negative impact on the health or safety of postal patrons or employees;
- C. Does the provision have an undue negative impact on the financial and other resources of the facility or the Service;
- D. What is the existence, nature, cost, and effectiveness of alternative means, other than the elimination or modification of existing LMOU provisions, of alleviating the alleged Undue Burden;
- E. What change has occurred, or will occur during the LMOU term, in the operational conditions existing at the time the provision in question was agreed which has contributed, or will contribute, to the creation of the Unreasonable Burden?

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CASE NUMBER: COC-4A-I-99054 / COC-4A-I-99055
ARBITRATOR: John C. Fletcher

UNREASONABLE BURDEN:

He stated that "[the term 'unreasonable burden' is subjective, but any definition would, nonetheless, require demonstration of a substantial impact. He continued by saying that "[m]erely being an inconvenience would not be an unreasonable burden. Nor would some additional costs, slight delay in mail processing-dispatching and modest overtime satisfy the test/"]

CASE NUMBER: WOC-5M-I 90114
ARBITRATOR: Barbara Bridgewater

UNREASONABLE BURDEN:

She ruled that 'an appropriate definition of 'unreasonable burden' clearly requires more than just evidence that a 'burden exists, otherwise the word 'unreasonable' would not have been included in Section F of Article 30."

CASE NUMBER: NOC-IT-I-90057

ARBITRATOR: Robert L. Mitrani

UNREASONABLE BURDEN:

In this case the Arbitrator refused to delete a provision providing that regular clerks shall have two consecutive days off, Saturday and Sunday, or Sunday and Monday. He found that there was no showing that unnecessary overtime would occur during weekends, holidays, and vacations.

Arbitrator Lennart Larson
Dunedin, FL
SIC-3W-C 38156

Page 6- He states, "Section 3B is applicable and expresses a general obligation on the part of the employer."

Arbitrator William Eaton
Pendleton, Or.
W4C-5G-C 31740

Page 12- He states, "In this dispute, however, the evidence is that the data upon which the Union relies is such that, a valid grievance having been demonstrated, the necessity for a remedy is presently more urgent than at the time the grievance arose."

Arbitrator Richard Mittenthal
Washington, D.C.
H4C-NA-C 77 and 93

September 20, 1988, with memo attached on "make whole" as it is referenced in arbitration awards and gives this Arbitrator an idea as to how the parties agreed on "make whole" remedy.

Arbitrator Edmund Schedler
Belle Chasse, LA
SIC-3Q-C 29121 and S4C-3N-C 42574

He states, "Section 3B is a broad statement of policy ... That statement carries the implication that Management will not adopt procedures or take actions to frustrate maximizing the number of full-time employees. Section 3C is merely a guideline."

Arbitrator Edmund Schedler
Lake Wales, FL
S4C-3W-C 57213 and 16589

He states, "The employer contended there was a freeze on conversions in accordance with Article 12 of the National Agreement. I do not agree."

Arbitrator Francis Asher Penn
Cedar Rapids, IA
C7C-4K-C 3576

She states, "The Arbitrator has studied the prior arbitration decisions provided by both parties and finds that the decisions provide a clear line of precedent hold that the Postal Service must maximize the number of full-time positions and minimize the number of part-time positions independent of Section 3.C of Art. 7."

Arbitrator Ernest E. Matlatt
Douglasville, Ga.
S7C-3E-C 18642

The Arbitrator analyzes several cases. He touches on the possible "Juggling or improper manipulation of hours to avoid the requirement to convert". He states at page 10, "It is clear that Article 7.3(b) sets out an overriding policy that the Postal Service must "maximize".

Arbitrator James J. Sherman
Searcy, AR.
S7C-3B-C 20567

Page 14- "First, paragraph B may seem as a broad mandate applicable to all Postal facilities, regardless of the size of the work force. In essence, it is a commitment on Management's part to give employees the benefit of full-time status if it is practical to do so."

Arbitrator Linda Dileone Klein
Canton, IL.
C7C-4L-C 22361

Page 8- "Article 7.3B is a 'broad policy' covering maximization of full-time employees and it creates an 'independent obligation' upon Management as it pertains to employee complements in all postal installations. Section 3.B can be interpreted as allowing for various duties to be combined into one full-time assignment and allowing for part-time hours of more than one PTF to be combined into one full-time assignment."

Arbitrator Ernest E. Marlatt
Dallas, TX.
S7C-3A-C 39848

Page 7- The Arbitrator addresses Management's attempt to bring in Article 12 arguments late and after the fact. He stated, "The Postal Service cannot thereafter put out the August 28, 1991, letter and attempt to make it retroactive to the time of the vacancy ..." Arbitrator Helburn should note that Management may quote from a previous Marlatt decision which involves Article 12. This instant case constitutes a reversal of the previous position Arbitrator Marlatt took in Leesburg, Florida.

Arbitrator John C. Fletcher
Jacksonville, IL.
C7C-4L-C 30041

Page 5-: "In such circumstances when the Union has made a prima facie showing in support of its contentions the burden (of persuasion if not the burden of proof) Shifts to the Service to demonstrate that the evidence is flawed and/or the conclusions suggested are imperfect." The Arbitrator should note that Management put forth no arguments and the Union's position is unrefuted that the five PTF's should be converted.

Arbitrator Louis V. Baldovin Jr.
Port Richey, FL
S7C-3W-C 22661

Page 6- "However, Section 3.C cannot be viewed as the only situation requiring conversion."

Arbitrator J. Earl Williams
Plant City, FL.
S7C-3W-C 26879

Page 8- "It is not surprising Arbitrator Sherman came up with the most succinct and meaningful interpretation of the role of paragraphs B & C."

Arbitrator James P. Martin
Minot, North Dakota
C7C-4S-C 10119

Page 13- "Read fairly, 'B' sets out a principle which is to be followed by Management, and 'C' sets out one case where the need to convert is demonstrated. Unless 'B' had a meaning independent of 'C', there would be no need for it to be in the Agreement."

Arbitrator Thomas J. Erbs
C4C-4K-C 7906

Page 6- The Arbitrator must review a remedy for a contract violation based upon the time frame of the violation and the situation that existed at the time of the violation."

Arbitrator J. Earl Williams
Forney, TX.
S4C-3A-C 31218

Consequently, with 3.B as the basis for analysis, there are a number of reasons which lead to a conclusion that Management was in violation of that language.

#2 It is rather clear that Management, for years, has followed a conscious effort to maximize PTF's. In 1966, there were two FTR's and two PTF's. A FTR retired in 1968 and was not replaced by anyone. Then, in 1970, another PTF was hired in place of the FTR. In 1971, the last FTR retired and was not replaced. Then, in 1971, a fourth PTF was hired. Just before the current Postmaster came in 1989, retirement and/or transfer suddenly had cut the staff to two PTF's. Quickly, the Postmaster hired two more PTF's, bringing the complement to 4 PTF's and no FTR's. Well before the time of the hearing, a fifth PTF had been hired. Thus, it is evident that Management has reversed the requirement of the contract and is maximizing PTF's.

#4 While Management suggested that efficiency and/or flexibility would be affected it gave no evidence related to that argument. Yet, as several arbitrators have pointed out, FTR's can be assigned fixed or rotating shifts-work days need not be consecutive; and, if a specific assignment runs out, the employee can be assigned to other available work. In fact, the Union agrees that the new FTR can be an unassigned regular. Yet, even without all this flexibility, Management still would be bound by the requirement to maximize full-time employees. It has done just the opposite in the subject case.

Arbitrator James P. Martin
Hartford, WI.
C4C-4J-C-28015

Management should have followed Arbitrator Garret's advice and created a position for the senior PTF corresponding to the specifications of Article 7.3.C. It did not do so, and from the evidence presented, had it done so, it would have found that a third full time position was appropriate. It did, without evidentiary changes in circumstances, ultimately create that position. Had PTF Berlinger been placed in a schedule of eight in ten, five days per week, she would have received, in effect, full time pay. She was therefore injured to the extent of not receiving full time pay for the period commencing November 22, 1986 through the present. She also inappropriately lost seniority to the employee who was appointed to full time position on June 4, 1988. Ms Berlinger was injured in both of these ways because of the Postal Service's failure to comply with the Agreement as enunciated by Arbitrators Garrett and Gamser. Its actions constituted a violation of Article 7.3.B, and it is appropriate in this case, comparable to the Opinion of Arbitrator Mittenthal, that the employee affected not be allowed to suffer financial or seniority losses as a result of the violation. She is to be made whole for her earnings loss from November 1, 1986, converted to full time regular at the first opportunity, and be granted seniority as a full time regular from November 22, 1986.

Arbitrator John C. Fletcher
Battle Creek, Michigan
C7C-4M-C 33604

Pages 6-7: "This language, and the several arbitration awards to which our attention has been directed, establishes an unmitigated conclusion that the service has committed itself to maximization of full-time employees and minimization of part-time employees. In this process, the agreement establishes certain situations which provide for automatic conversion from part-time to full-time in instances where certain factors can be demonstrated."

Arbitrator William Eaton
Concord, Ca.
WOC-5E-C 15011

Page 17- "The contractual issue is the right accorded to the Union to have consecutive days off for as many employees as "practicable." To enforce this contractual obligation there must be compensation to the individual involved, which, of necessity, amounts to a penalty assessed against the Employer. If a violation were always to be remedied simply by restoring the correct order of assignment, there is no penalty to be feared, and nothing to be lost, by violating the agreement. All that would then be required would simply be to stop the violation which had occurred. This, it seems to me, is not effectively discharging the duty of an arbitrator to enforce the provisions of the National Agreement.

Arbitrator Thomas J. Erbs
Jefferson City, MO.
C7C-4P-C32532

Page 14- It is also noted that the Postal Service argument against maximization is also based on the possibility of automation and the anticipated effect on the bargaining unit positions because of such automation. The Postal Service argues that it "does not seem prudent to increase the number of full time employees on the rolls if it would later become necessary to reduce the rolls in the near future." Such speculation, however, does not decide the question before the Arbitrator. The question before the Arbitrator is whether, at the time of the grievance,

the Postal Service had fulfilled its obligation under the contract to establish full-time positions. In the Arbitrator's opinion, based upon the evidence, the Union has proven that 2 full-time positions should have been established. The new arguments raised by the Postal Service and the effect of the withholding of positions as set forth in the letters between the parties are not controlling in this matter.

He goes on to say, "The Senior PTFs, qualified for such positions, shall be awarded such positions and shall be made whole. The Arbitrator will retain jurisdiction of the case for 60 days to resolve any disputes that regard arise in record to the ruling.

Arbitrator James P. Martin
Bay City, Michigan
C7C-4M-C 518

Page 5- "Management's response was, the Union did not show that the numbers set out in Article 7.3C have been met, and there is therefore no failure to maximize. By standing on its defense of Article 7.3C, Management made no defense to the presumptive failure to maximize under 7.3B, established through the numbers developed in the study and the change from a 12 percent to a 23 percent Part Time force. With the denial of Management's right to rely solely upon compliance with Article 7.3C, there was no defense whatsoever presented to the union's claim of contract violation based upon the violation of Article 7.3B. A prima facie case was made by the Union, and, as just noted, it was not rebutted by any Management evidence. That being the state of the record, there is no choice but to allow the Grievance and to direct that Management establish two Full Time positions to the senior qualified Part Time Flexible Clerks, effective the date of this Award.

Arbitrator Lamont E. Stallworth
Beech Grove, IN.
J90C-1J-C 94046522

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Page 13- "Article 7 does not contain language stating that the hours of these types of workers cannot be combined in order to show that a conversion of a part-time flexible position to a full-time position is warranted. It is the Arbitrator's opinion that the underlying purpose of Article 7, Section 3 (B) would be frustrated by such a determination. The Service should not be able to avoid its obligation under Section 3(B) to maximize the use of full-time employees and minimize the use of part-time employees by employing transitional and casual employees.

He further states, "Accordingly, the Arbitrator concludes that Management violated the Agreement by not converting the senior part-time flexible employee to a full-time regular position based upon the criteria set forth in Article VII, Section(B). Consequently, as a remedy, the Service shall staff one additional full-time Clerk position at the Beech Grove Post Office....

Arbitrator Joseph S. Cannavo, Jr.
Liberty Corner, NJ.
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Page 7- "Finally, the Arbitrator has reviewed Article 7.3 and the national and local memoranda. The spirit and intent of these agreements is clear and unambiguous and it places an obligation on the Employer to "maximize the number of full-time employees and minimize the number of part-time employees who have no fixed schedules."

Arbitrator Harry J. Dworkin
Pekin, Illinois
C7C-4L-C 19971

Page 16- Although, the arguments advanced by the Postal Service have merit, they are outweighed to a substantial degree by the evidence, and the contract language which mandates maximization of the number of full-time employees, and minimization of the number of part-time employees "who have no fixed work schedule in all postal installations", (Paragraph (B)).

Arbitrator J. Earl Williams
Weaver, AL.
S7C-3D-C 32569

Page 10- "In summary, the heavy weight of arbitral opinion is on the side of a broad interpretation of the requirement to maximize under 7.3.B. It is not necessary to meet the conditions of 3.C. Perhaps two cases in the early 1980s appeared to rely on 3.C, but they were not purists, for it was clear that, under certain conditions, they would not have required the use of 3.C. In fact, this Arbitrator knows of no purists, re the use of 3.C. The weight of opinion re the use of 3.B is clear. In the subject case, conditions support the conversion of the grievant to full-time regular. There is more than sufficient work to do so." Management's refusal to do so is a violation of Article 7.3.B. This violation, standing alone, is more than sufficient for the Arbitrator to order the conversion.

Arbitrator Robert W. Foster
High Point, NC.
E4C-2G-C 41520

Page 6- "Turning then to the applicable provision of Article 7, Section 3, it is clear that the parties have agreed to limit the flexibility that would otherwise be enjoyed by management in determining the appropriate mix of PTF's and full-time regular employees. Subsection B, in no uncertain terms, requires the maximization of full-time employees with a corresponding duty to minimize the complement of PTF's. The statical data received into evidence in this case at the time the grievance was filed and continuing to the present shows without doubt that local management has failed to satisfy this contractual standard.

By: Eric Wilson and Pat Williams
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